

## Unit 7



<b>Title:</b>	<b>Family Law</b>
<b>Level:</b>	<b>3</b>
<b>Credit Value:</b>	<b>7</b>

<b>Learning outcomes</b>	<b>Assessment criteria</b>	<b>Knowledge, understanding and skills</b>
<b>The learner will:</b>	<b>The learner can:</b>	
<b>1 Understand the classification and sources of family law</b>	<p><b>1.1</b> Describe the main sources of Family Law</p> <p><b>1.2</b> Identify the courts that hear Family Law cases</p> <p><b>1.3</b> Identify the legal personnel that deal with Family Law cases</p>	<p><b>1.1</b> Outline of relevant statutes and common law, eg Marriage Act 1949 and 1994, Matrimonial Causes Act 1973, Civil Partnership Act 2004, Gender Recognition Act 2004, Children Act 1989; case law</p> <p><b>1.2</b> Family law as a branch of civil law; outline only of position in court structure</p> <p><b>1.3</b> Judiciary, solicitors, mediator's role in outline only</p>
<b>2 Know which areas of law and which family members are the concerns of Family Law</b>	<p><b>2.1</b> State the social relationships that are the concern of Family Law</p> <p><b>2.2</b> State which members of the family are the concerns of Family Law</p>	<p><b>2.1</b> Overview of marriage &amp; marriage breakdown; cohabitation &amp; cohabitation breakdown; civil partnerships and civil partnership breakdown; public and private child matters</p> <p><b>2.2</b> An outline of: Husbands and wives; cohabitees; civil partners; transsexuals; marital and non-marital children</p>
<b>3 Understand the consequences of the Human Rights Act 1998 for Family Law</b>	<p><b>3.1</b> Explain the effect of the Human Rights Act 1998 on Family Law</p>	<p><b>3.1</b> Outline of the incorporation of the ECHR by the Human Rights Act 1998 and consequent implications for family law in England and Wales, eg. Art 6 ECHR – right to a fair trial; Art 8 ECHR – right to respect for private and family life; Art 12 ECHR – right to marry and found a family</p>

<p><b>4 Understand the legal definition of marriage</b></p>	<p><b>4.1</b> Identify the common law definition of marriage</p> <p><b>4.2</b> Apply the definition of marriage to a given situation</p>	<p><b>4.1</b> Marriage as a legal relationship; ‘Voluntary union for life of one man to one woman to the exclusion of all others’; <i>Hyde v Hyde and Woodmansee (1866)</i>; individuals give consent to marriage, s3 Marriage act 1949; age requirements, s2 Marriage Act 1949; capacity requirements; formalities are necessary and differ with belief and jurisdiction; Marriage includes consortium: brief outline of spousal obligations upon marriage, eg consummation of the marriage; marital confidences; sharing a common home, domestic life, surname; evidence in legal proceedings; with some illustrative examples of case law</p> <p><b>4.2</b> Application to a scenario</p>
<p><b>5 Understand the legal differences between marriage and cohabitation</b></p>	<p><b>5.1</b> Describe in outline the legal differences between marriage and cohabitation</p> <p><b>5.2</b> Explain in outline Cohabitation Contracts</p> <p><b>5.3</b> Describe in outline the law as it relates to property rights on cohabitational breakdown</p> <p><b>5.4</b> Apply this understanding of the legal difference to a given situation</p>	<p><b>5.1</b> Heterosexual cohabitation as an alternative to marriage; financial support; property rights</p> <p><b>5.2</b> Advantages of cohabitation contracts: shows evidence of ‘common intention’; provides a framework for use if the relationship breaks down</p> <p><b>5.3</b> Property rights depend upon the ordinary law of property, eg, resulting trusts, constructive trusts; outline only using key, current and relevant decisions to illustrate</p> <p><b>5.4</b> Application to a scenario</p>
<p><b>6 Understand the consequences of the Civil Partnership Act 2004</b></p>	<p><b>6.1</b> Explain what is meant by civil partnership</p> <p><b>6.2</b> Describe the legal consequences of civil partnership</p>	<p><b>6.1</b> Legally recognised civil partnership registration; Civil Partnership Act 2004</p> <p><b>6.2</b> Civil partners have legal rights similar to those of married couples, e.g. property rights, inheritance provisions, pension rights</p>

	<p><b>6.3</b> Describe the legal consequences of the breakdown of a civil partnership</p> <p><b>6.4</b> Apply an understanding of the consequences of the Civil Partnership Act to a given situation</p>	<p><b>6.3</b> Financial and property awards on breakdown of civil partnership, s44 Civil Partnership Act 2004; Separation order, s56 Civil Partnership Act 2004</p> <p><b>6.4</b> Application to a scenario</p>
<p><b>7 Understand the legal provisions that enable a marriage to be ended</b></p>	<p><b>7.1</b> Outline the key features of voided marriages</p> <p><b>7.2</b> Explain that the irretrievable breakdown of marriage is the only ground for divorce</p> <p><b>7.3</b> State the facts that have to be established to prove irretrievable breakdown of marriage</p> <p><b>7.4</b> Explain how a divorce can be prevented or delayed</p>	<p><b>7.1</b> Outline of void and voidable marriages; annulment of marriage</p> <p><b>7.2</b> s1(1) MCA 1973</p> <p><b>7.3</b> s1(2)(a)-(e) MCA 1973; adultery; the fact of adultery and the fact of intolerability are independent, eg, <i>Cleary v Cleary (1974)</i>; behaviour; what constitutes 'behaviour' as illustrated by relevant case law; unreasonableness of cohabitation is subjective, egs, <i>Livingstone-Stallard v Livingstone-Stallard (1974)</i>; <i>Thurlow v Thurlow (1975)</i>; desertion; withdrawal from the state of marriage; two years' separation with consent; what constitutes separation as illustrated by relevant case law, egs, <i>Mouncer v Mouncer (1972)</i>; <i>Fuller v Fuller (1973)</i>; five years' separation; absence of consent; stopping the 'fact' clock from running; promoting reconciliation, s2 MCA 1973</p> <p><b>7.4</b> Parties must have been married for a year before a petition is presented, s3 MCA 1973; s5 MCA 1973 applies to petitions under the separation facts; 'grave financial or other hardship'; s10 MCA 1973 applies to a petition founded on five years' separation to request the divorce is not made final until all financial and property aspects have been concluded; <i>Le Marchant v Le Marchant</i></p>

	<p><b>7.5</b> Explain the process of mediation for family disputes</p> <p><b>7.6</b> Apply an understanding of the main requirements for establishing divorce to a given situation</p>	<p>(1977); <i>Rukat v Rukat</i> (1975); awareness of Cross-petition, s1(2) MCA 1973</p> <p><b>7.5</b> Encouraging parties to divorce to reach voluntary arrangements on their futures; Part III Family Law Act 1996</p> <p><b>7.6</b> Application to a scenario</p>
<b>8 Understand the relevance of legally authorised separation to end a marriage</b>	<p><b>8.1</b> State the grounds for seeking a legal separation</p> <p><b>8.2</b> State the consequences of legally authorised separation</p> <p><b>8.3</b> Apply an understanding of legal separation to a given situation</p>	<p><b>8.1</b> Need not show that marriage has irretrievably broken down, s1(1) MCA 1973; proof of any of the five facts, s1(2) MCA 1973; often used where one year time bar applies or where objection to divorce by one or both parties</p> <p><b>8.2</b> Financial relief can be granted as on divorce; cohabitation can cease; cannot succeed on intestacy; no re-marriage; parties are not under an obligation to cohabit; not free to remarry; surviving spouse cannot succeed on intestacy; a will is not affected, s18(2) MCA 1973</p> <p><b>8.3</b> Application to a given scenario</p>
<b>9 Understand financial provision during marriage and after divorce</b>	<p><b>9.1</b> Explain the circumstances in which a party to marriage might be eligible for financial provision during marriage</p> <p><b>9.2</b> State the grounds that must be established before a financial order can be made by</p>	<p><b>9.1</b> Victims of domestic violence; homelessness; applications can be made to the Family Proceedings Court under the Domestic Proceedings and Magistrates Court Act 1978 (DPMCA 1978); or to the County Court and High Court under s27 MCA 1973; failure to provide reasonable maintenance for the applicant and/or any child of the family; Periodical Payment Orders and Lump Sum Orders (for applicant and/or child of the family)</p> <p><b>9.2</b> All the circumstances: income and earning power, financial needs, standard of living, age</p>

	<p>the Family Proceedings Court for financial provision during marriage</p> <p><b>9.3</b> State the types of orders the courts have the power to make on divorce, annulment and legal separation</p> <p><b>9.4</b> Apply an understanding of financial provision to a given situation</p>	<p>of each party and duration of marriage, physical and mental disability, contributions made by each party, conduct; first consideration to the welfare of any children; s3(1) DPMCA 1978</p> <p><b>9.3</b> Ancillary relief; ss22-24 MCA 1973; maintenance pending suit; clean break orders; secured and unsecured periodical payment orders; lump sum orders; property adjustment orders; Martin Order; <i>Mesher Order</i>; pension orders; <i>S v S (2004)</i>; <i>White v White (2000)</i> and other important and relevant case law as it develops; effects of divorce on the matrimonial home; The Family Law Act 1996; protection of non-owning spouses interest by registration of Class F land charge or entry of a notice on the register; the effect of <i>Williams and Glyn's Bank Ltd v Boland (1980)</i>: the requirement for a mortgagee seeking possession to identify the protected non-owning spouse; the non-owning spouse's right to be a party to these proceedings</p> <p><b>9.4</b> Application to a scenario</p>
<p><b>10 Understand private law orders for children under the Children Act 1989</b></p>	<p><b>10.1</b> Explain the concept of parental responsibility</p> <p><b>10.2</b> Identify persons or bodies who have or can acquire parental responsibility</p> <p><b>10.3</b> Explain the relevant case law relating to parental responsibility</p>	<p><b>10.1</b> Parental responsibility; s3(1) Children Act 1989 (CA 1989)</p> <p><b>10.2</b> Married and unmarried parents; parental responsibility agreement; parental responsibility order; s4 CA 1989; Adoption and Children Act 2002</p> <p><b>10.3</b> Example cases: <i>Gillick v West Norfolk and Wisbech Area Health Authority (1985)</i>; Gillick competence; 3)(a) CA 1989; 'ascertainable wishes and feelings of the child'; <i>Re A (a Minor)(Blood Transfusion)(1993)</i>; <i>Re G</i></p>

	<p><b>10.4</b> State the duties that parents owe their children</p> <p><b>10.5</b> Demonstrate how the principles and factors of the Children Act 1989 are applied by the courts when making decisions about children</p> <p><b>10.6</b> Explain the meaning and scope of s.8 Children Act 1989 orders</p> <p><b>10.7</b> State who can apply for s.8 orders</p> <p><b>10.8</b> Explain the meaning and scope of Family assistance orders</p> <p><b>10.9</b> Apply an understanding of private law orders to a given situation</p>	<p><i>(Parental Responsibility: Education) (1994)</i></p> <p><b>10.4</b> Child's upbringing, property, education, religion, surname, medical treatment, marriage</p> <p><b>10.5</b> s1(1) CA 1989, the paramountcy principle; s1(5) CA 1989, the non-intervention principle; s1(2) CA 1989, the avoidance of delay principle; s1(3) CA 1989, checklist; Art 8 ECHR</p> <p><b>10.6</b> s8 CA 1989; residence order, contact order, prohibited steps order, specific issue order</p> <p><b>10.7</b> s10(4) CA 1989; s10(5) CA 1989; Civil Partnership Act 2004</p> <p><b>10.8</b> s16 CA 1989</p> <p><b>10.9</b> Application to a scenario</p>
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<b>Additional information about the unit</b>	
Unit aim(s)	The learner will understand key concepts, terms and processes in the area of Family Law
Unit expiry date	31 December 2010
Details of the relationship between the unit and relevant national occupational standards (if appropriate)	This unit may provide relevant underpinning knowledge and understanding towards units of the Legal Advice standards; specifically, Unit 63 First Line Family Law Advice and Unit 64 Family Law Advice and Casework
Details of the relationship between the unit and other standards or curricula (if appropriate)	Courses of study leading towards the achievement of the unit may offer the learner the opportunity to satisfy requirements across a number of Level 3 Key Skill areas; most specifically, Communication, Improving own learning and performance, Problem solving and Working with others
Assessment requirements specified by a sector or regulatory body (if appropriate)	na
Endorsement of the unit by a sector or other appropriate body (if required)	na
Location of the unit within the subject/sector classification	15.5 Law and Legal Services
Name of the organisation submitting the unit	ILEX (Institute of Legal Executives)
Availability for use	Only available to owning awarding body
Availability for delivery	1 September 2008