

Unit 20



Title:	The Practice of Family Law
Level:	6
Credit Value:	15

Learning outcomes	Assessment criteria	Knowledge, understanding and skills
The learner will:	The learner can:	
1 Understand how to terminate a marriage and civil partnership	<p>1.1 Explain divorce and dissolution as methods of terminating marriage and civil partnership respectively</p> <p>1.2 Explain the process and effects of undefended divorce and dissolution of a civil partnership</p> <p>1.3 Explain the costs incurred in these</p>	<p>1.1 Termination of marriage under the Matrimonial Causes Act 1973 as amended (MCA 1973); dissolution of civil partnership under the Civil Partnership Act 2004 (CPA 2004) in the English Courts; including analysis of the jurisdiction of the English Courts to deal with the matter by reference to the definition of habitual residence and domicile in the appropriate Council Regulation; relevant case law, eg, <i>R v Barnett LB, exp Shah (1983) 2 AC 309</i>, <i>Mark v Mark [2004] 1 FLR 1069</i>, <i>Ikimi v Ikimi (2001) EWCA Civ 873</i> and <i>M v M [2007] 2 FLR 1018</i></p> <p>1.2 A description of the special procedure in undefended divorce and the procedure for dissolution of civil partnership; identification of the required documentation; issues arising; consideration of the effect on inheritance; ownership of property, pensions entitlement etc; on obtaining a final decree; impact of pre-nuptial contracts</p> <p>1.3 An explanation of the approximate costs and</p>

	<p>proceedings including consideration of whether the costs will be met by private means or public funding</p> <p>1.4 Explain best practice in this area</p> <p>1.5 Analyse a given legal situation on the termination of marriage and civil partnership in order to offer practical advice and assistance to a petitioner or respondent</p>	<p>disbursements involved in the process from instructions received to final decree; compliance with the requirements of the Solicitors' Code of Conduct 2007 ("the Code") with regard to costs, eg, fixed fee or giving clients the best estimate available and keeping the cost estimate under review; the levels of public funding currently in force and the qualifying criteria, eg, the means and merits test; the effects of the statutory charge and an appreciation of the duties owed to the Legal Services Commission ("LSC") in relation to the provision of legal services to publicly funded clients (in outline only)</p> <p>1.4 An explanation of the purpose of the Family Law Protocol (the Protocol); its key elements: namely, agreeing to adopt a constructive and conciliatory approach in the resolution of disputes arising from the ending of a relationship; best practice in this area is in Part 2 and includes giving notice before issue of proceedings; prior to issue of the petition trying to agree the contents in order to save acrimony; not naming a co-respondent in a petition based on adultery</p> <p>1.5 Analysis of a complex scenario to offer advice and assistance, eg, issues arising from accepting instructions to act such as identity checks, conflicts of interest, confidentiality and client care in compliance with the Code; drafting a competent petition in undefended divorce or for the dissolution of a civil partnership (ie, drafting a petition in its entirety from information given in a fictitious scenario, including particulars of the fact used; drafting the petition to a competent standard, which</p>
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		would be accepted by a divorce county court; commenting on completed documents, which may be either incorrectly or badly drafted)
2 Understand the financial consequences of terminating a marriage or dissolving a civil partnership	<p>2.1 Explain the most commonly used forms of dispute resolution as a means of resolving a financial dispute arising on the termination of a marriage or the dissolution of a civil partnership</p> <p>2.2 Describe the process of mediation or another form of ADR as may be appropriate</p> <p>2.3 Explain the costs incurred in these proceedings including consideration of whether the costs will be met by private means or public funding</p>	<p>2.1 An explanation of the different types of dispute resolution: namely, agreement reached between the parties, negotiation between solicitors, mediation or other forms of alternative dispute resolution (ADR) such as collaborative law or court-based conciliation (where available) and adjudication by the court to resolve financial disputes; consideration of the benefits and in particular the costs, benefits and or limitations of mediation and other ADR methods; an appreciation of the need to keep the appropriateness of the process of ADR under review</p> <p>2.2 The process involves the parties to the dispute, whether or not legally represented or whether or not legal proceedings have commenced, agreeing to appoint a neutral third party (the mediator) who is impartial and has no authority to make any decision with regard to the subject matter of the dispute (which may relate to separation, divorce, children, property, financial issues or a combination thereof); the mediator helps them to reach their own informed decisions by negotiation without adjudication; an understanding of the role of the advisor to a client engaged in the ADR process and adopting best practice in relation to ADR as set out in the Protocol</p> <p>2.3 An explanation of the approximate costs and disbursements involved in ancillary relief proceedings; compliance with the requirements of the Code with regard to costs</p>

	<p>2.4 Summarise the ancillary relief procedure</p> <p>2.5 Explain the factors the court will take into account in making an order for ancillary relief</p> <p>2.6 Explain the consequences of the breakdown of a marriage or civil</p>	<p>and generally being aware of possible conflicts of interest, eg, Money Laundering Regulations 2007 and the effect of the case of <i>Bowman v Fels</i> [2005] EWCA Civ 226 and the duty to report; the effects of the statutory charge and the discretion to postpone; an appreciation of the duties owed to the LSC in relation to the provision of legal services to publicly funded clients, eg, the duty to report to the LSC the client's unreasonable refusal of an offer to settle</p> <p>2.4 MCA 1973/CPA 2004; applications and typical directions/timelines, the requirement for mediation, the duty of full and frank disclosure, costs, funding and the effect of the statutory charge; the procedure from issue to final hearing</p> <p>2.5 The application of section 25 MCA 1973; analysing the strengths and weaknesses of a client's case and predicting a possible outcome; orders available and their use: maintenance pending suit, lump sum, periodical payments, clean break, transfer, settlement, sale of family home, pensions, including consideration of Mesher Martin and Harvey orders; identifying and explaining a package of orders to comprise a resolution of the financial claims; justifying each term; relevant case law, eg, <i>White v White</i> [2000] 2 FLR 927; <i>Miller v Miller</i>; <i>McFarlane v McFarlane</i> (joined cases) [2006] UKHL 24 and <i>Charman v Charman</i> [2007] EWCA Civ 503 and its implications</p> <p>2.6 An analysis of how the family home is treated by the courts in situations of marriage/civil</p>
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	<p>partnership in relation to the ownership and/or occupation of the family home</p> <p>2.7 Explain the appropriate action to be taken in order to prevent disposals or set aside disposals of assets made with a view to frustrate financial claims</p> <p>2.8 Explain enforcement provisions in relation to financial orders</p> <p>2.9 Explain best practice in this area</p> <p>2.10 Explain the rules as to admissibility of evidence and the duty to provide full and frank disclosure in applications made to</p>	<p>partnership breakdown; an explanation of home rights under the Family Law Act (FLA) 1996 section 30; the acquisition and registering of home rights; severance of joint tenancy and application of other relevant legislation, eg, Section 24 MCA 1973 or Schedule 7 FLA 1996 in relation to the transfer of tenancies</p> <p>2.7 The role of injunctive action under section 37 MCA 1973 to prevent a disposal (section 37 (2) (a)) or set aside a disposition already made with a view to frustrate a claim being made in relation to it for financial provision (section 37 (2) (b)); analysis of a “reviewable disposition” as set out in section 37 (2) (c) and the requisite intention required to satisfy the court in order to obtain an injunction</p> <p>2.8 Methods available to enforce an order, eg, attachment of earnings; warrant of execution; charging order; collection and enforcement by the Child Support Agency; enforcement in the family proceedings court; circumstances of their use and analysis of their effectiveness</p> <p>2.9 Main sections of the Protocol; examples of best practice include pre-application disclosure and negotiation so that parties are in a position to settle the case fairly and early in the process without litigation; the Protocol encourages the narrowing of issues in dispute to aid the effective and timely resolution of the dispute</p> <p>2.10 In outline only, the relaxation of rules of evidence in relation to applications made under the MCA 1974 or the CPA 2004; the</p>
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	<p>court</p> <p>2.11 Explain, in outline only, the impact of welfare benefits and the duty of a local authority to provide housing</p> <p>2.12 Explain the overriding objective in relation to the proportionality of costs, including tactics for making offers to settle</p> <p>2.13 Analyse a given legal situation on the financial consequences of terminating a marriage and dissolving a civil</p>	<p>admissibility of offers to settle during the procedure and the general duty of disclosure; relevant case law, eg, <i>Livesey (formerly Jenkins) v Jenkins</i> [1985] AC 424; <i>P v P (Financial Relief: Non-Disclosure)</i> [1994] 2 FLR 381; <i>Kimber v Brookman Solicitors</i> [2004] 2 FLR 221</p> <p>2.11 Child benefit; Income Support and the “passport benefits” automatically gained, eg, free school meals; Jobseeker’s Allowance; working tax credit and child tax credit; housing benefit; council tax benefit; duty of a local authority to provide accommodation as set out in Housing Act 1996 and the Homelessness Act 2002, eg, where the former matrimonial home is sold either because of large mortgage arrears or because on relationship breakdown neither party can afford it alone</p> <p>2.12 An explanation of the principle of proportionality, eg, that it is unacceptable for the costs of any case to be disproportionate to the value of the subject matter of the dispute, eg, valuation of family businesses and joint instruction of experts; the pre-application protocol annexed to the Practice Direction (Ancillary Relief Procedure) [2000] 1 FLR 997; eg, pre-application disclosure and negotiation with a view to try to settle fairly before proceedings; tactics: eg, open offers to settle; costs orders, eg, litigation conduct being taken into account in the discretion to make costs orders against one party</p> <p>2.13 Analysis of a complex scenario to offer advice and assistance, eg, re mediation and ancillary relief, where agreement is reached or</p>
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	partnership in order to offer practical advice and assistance	otherwise, the drafting of an agreement to include heads of agreement and consent orders; drafting documentation required in relation to ancillary relief procedure (ie, explaining and drafting documentation such as a Statement of Issues, specific parts of Form E etc; commenting on completed documents, which may be either incorrectly or badly drafted)
3 Understand the legislation, provisions and remedies available in cases of domestic violence and molestation	<p>3.1 Explain the alternative options to court proceedings and their appropriateness</p> <p>3.2 Explain the impact of legislation</p>	<p>3.1 The role of the police as the first point of contact where there has been domestic violence; the necessity to have considered alternative methods of dealing with domestic violence, eg, writing a warning letter to the respondent (especially in the context of publicly funded clients), police prosecution under the criminal law; support for victims, eg, refuges and places of safety and regional differences in support</p> <p>3.2 Part IV of the FLA 1996 and the Protection from Harassment Act 1997; appropriate use of non-molestation under section 42 FLA 1996 and occupation orders under sections 33 and 35-8 FLA 1996 provisions; associated persons; appropriate applications either on notice/without notice; factors governing their use; explaining and applying the balance of harm test and the statutory factors; assessing the strengths and weaknesses, including the weight of evidence; predicting a possible outcome; additional provisions under section 40 FLA 1996 concerning payment of outgoings relating to the home; duty of a local authority to provide accommodation as set out in Housing Act 1996 and the Homelessness Act 2002</p>

	<p>3.3 Summarise the procedure used to apply for these orders, including the procedure required for a with or without notice (urgent) application to the court and service of the order</p> <p>3.4 Explain, in outline only, the rules as to admissibility and how the weight of evidence in proceedings of this nature is evaluated</p> <p>3.5 Summarise the methods of enforcement of both non-molestation and occupation orders including an explanation of the use of undertakings given to the court</p> <p>3.6 Describe best practice in this area</p> <p>3.7 Analyse a given legal situation on the legislation, provisions and remedies available in cases of domestic violence and molestation in order to offer practical advice and assistance to both an applicant and a respondent in these proceedings</p>	<p>3.3 Deciding when applications are appropriate with or without notice; applying for an order: eg, in the case of a without notice (urgent) application deciding with the client whether they may be in danger if the proceedings are issued on notice; on a decision to issue proceedings without notice then telephoning the court to make an appointment before the judge further arranging for the personal service of the order on the respondent</p> <p>3.4 The rules of evidence in relation to oral applications; evaluating the strengths and weaknesses of evidence, including the weight of evidence; predicting a possible outcome</p> <p>3.5 The courts' and the police powers of enforcement, under FLA 1996 eg, the criminal offence of breach of a non-molestation order, the power of arrest on occupation orders and the possibility of undertakings</p> <p>3.6 Relevant sections of the Protocol; examples of best practice include: where domestic violence is an issue and the parties have children care should be taken to ensure the client's safety is not compromised by meetings arranged by third parties, eg, CAFCASS officers for negotiations in relation to children</p> <p>3.7 Analysis of a complex scenario to offer advice and assistance, eg, drafting documentation in relation to the application for an order, including a FL401 and the statement in support of the application; be familiar with the contents of orders and requirements of a statement in support (ie, evaluating the documentation so as to be able to advise on</p>
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		the strengths and weaknesses, including the weight of evidence and predicting a possible outcome)
4 Understand the Children Act (CA) 1989 in relation to private law	<p>4.1 Explain the overall intent and purpose of section 1 of the CA 1989</p> <p>4.2 Explain the concept of parental responsibility (PR)</p> <p>4.3 Explain the availability and effect of orders under section 8 CA 1989</p>	<p>4.1 The welfare principle: section 1 (1), the no delay principle: section 1 (2) and the no order principle: section 1 (5) of the CA 1989; applying the legislation</p> <p>4.2 Identification of how PR arises automatically or how it can be acquired under both the CA 1989 and how it may be lost; the factors and considerations under section 4 A of the CA 1989 which a court will take into account and apply to private proceedings; analysis and interpretation of legislation and case law relevant to PR, eg, <i>Re G (PR: Education) (1994)</i>; <i>Re C (Change of Surname) (1998)</i>; <i>Re H (PR) (1998)</i>; <i>Dawson v Wearmouth (1999)</i> and <i>Re P (Terminating PR) (1995)</i>; evaluating the strengths and weaknesses in situations and predicting a possible outcome</p> <p>4.3 Orders available (contact; residence; specific issue and prohibited steps orders): who may apply (including when leave of the court is required); interim and without notice applications; the factors/considerations under section 1 (3) of the CA 1989 and their application to private proceedings; analysis and interpretation of relevant case law, eg, <i>Re L (Domestic Violence & Contact) (2000)</i>; <i>Re A (section 8 Order: Grandparent Application) (1995)</i>; <i>Re M (Intractable Contact Dispute: Interim Care Order)(2003)</i>, <i>Re D (Shared residence) [2001] 1 FLR 495</i> and <i>Re B (A Child) [2009]</i>; evaluating the strengths and weaknesses in situations and predicting a possible outcome in relation to section 8 of the</p>

	<p>4.4 Explain, in outline only, removal from the jurisdiction, child abduction and change of name with regard to the relevant legislation and the current practice directions</p> <p>4.5 Identify when a family assistance order may be made</p> <p>4.6 Summarise the procedure for entering into a PR Agreement, obtaining a PR order or applying for a section 8 order</p> <p>4.7 Explain financial provision for children on the breakdown of a relationship</p> <p>4.8 Describe best practice in this area</p>	<p>CA 1989.</p> <p>4.4 The limitations imposed by section 13 of the CA 1989 in relation to changes of surname and travelling abroad, eg, holidays or emigration; application of the legislation, eg, applications to be made or transferred to the High Court in cases of child abduction and relevant case law in relation to child abduction and the Hague Convention, eg, <i>Payne v Payne (Leave to Remove) (2001)</i> and <i>Re C (Change of name) [1998] 1 FLR 549</i></p> <p>4.5 A summary of the provisions under section 16 of the CA 1989</p> <p>4.6 An explanation of the procedures to be followed in entering PR Agreements, eg, the requirement for registration; or obtaining a PR order under section 4 of the CA 1989; section 8 order procedures; the role of CAFCASS and the nature and effect of related documentation such as expert reports or medical evidence; an awareness of regional variations in procedures; the revised Private Law Programme</p> <p>4.7 Financial provision for children available through Child Support legislation; an awareness of the courts' limited jurisdiction to deal with financial provision under the MCA 1973 or CPA 2004 (if appropriate) and the limited scope of Section 1 Schedule 15 of CA 1989</p> <p>4.8 Relevant sections of the Protocol; examples of best practice include the requirement to avoid draft statements using emotive and or inflammatory language or expressing</p>
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	<p>4.9 Explain, in outline only, the rules as to admissibility of evidence and disclosure in applications made to court under the CA 1989</p> <p>4.10 Analyse a given legal situation on the Children Act 1989 in order to offer practical advice and assistance to both an applicant or a respondent</p>	<p>subjective opinion; the discouragement of statements or letters written by children</p> <p>4.9 The relaxation of rules of evidence and the requirement for leave of the court in relation to CA 1989 applications</p> <p>4.10 Analysis of a complex scenario to offer advice and assistance, eg, drafting the appropriate documentation to be used in an application for a section 8 order; drafting a PR Agreement</p>
<p>5 Understand the financial consequences of relationship breakdown for the unmarried family/couple</p>	<p>5.1 Compare and contrast the financial consequences of ending a marriage, a civil partnership and a cohabitation</p> <p>5.2 Explain the consequences of the breakdown of a relationship for the unmarried family/couple in relation to the ownership and or occupation of the family home</p> <p>5.3 Explain the impact of express and implied trusts in relation to the family home for the unmarried family/couple</p>	<p>5.1 The differing financial consequences for married couples/civil partnerships and unmarried couples, eg, unmarried couples have very limited rights against the estate of a former partner in the event of death; wills; Inheritance (Provisions and Family Dependents) Act 1975; cohabitation/separation agreements, their contents and the enforceability of these agreements in outline only</p> <p>5.2 Relevant statutes: Law of Property Act 1925, and legal and beneficial interests in land, eg, the existence of a declaration of trust setting out entitlement; Trusts of Land and Appointment of Trustees Act 1996, in particular sections 14 and 15, which relate to the power of sale; the strengths and weaknesses, including the weight of evidence; predicting a possible outcome</p> <p>5.3 Identification of express and implied trusts; the impact of relevant case law, eg, <i>Stack v Dowden (2007)</i> and <i>Lloyds Bank plc v Rosset (1990) 2 WLR 867</i></p>

	<p>5.4 Summarise proposals for reform and identify areas of concern</p> <p>5.5 Analyse a given legal situation on the financial consequences of relationship breakdown for the unmarried family/couple in order to offer practical advice and assistance</p>	<p>5.4 A summary of the proposals for reform of the law set out in the Law Commission report "Cohabitation: The Financial Consequences of Relationship Breakdown" in relation to the ownership and occupation of the family home by the unmarried family/couple</p> <p>5.5 Analysis of a complex scenario to offer advice and assistance</p>
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Additional information about the unit	
Unit aim(s)	To accredit a broad and detailed understanding of the Practice of Family Law
Unit expiry date	31 March 2015
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)	Na
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	Available to all Awarding Bodies to award credit (shared)
Availability for delivery	1 September 2009

This Specification is for 2012 examinations