

GUERNSEY BAR EXAMINATION

9.30AM, 1 May 2015

**PAPER FOUR
FAMILY LAW**

THREE HOURS

CANDIDATES ARE REQUIRED TO ANSWER ALL QUESTIONS

THE MARKS AVAILABLE FOR EACH QUESTION ARE SHOWN. NOT ALL QUESTIONS CARRY EQUAL MARKS.

PLEASE WRITE LEGIBLY AND ENSURE THAT YOU ANSWER EACH QUESTION ON A SEPARATE SHEET OF PAPER. PLEASE WRITE ON ONE SIDE OF THE PAPER ONLY AND LABEL EACH SHEET CLEARLY WITH:

- **NAME OF PAPER**
- **CANDIDATE LETTER**
- **QUESTION NUMBER**
- **PART NUMBER OF QUESTIONS (if applicable)**

MATERIAL PROVIDED:

- 1. The Children (Guernsey and Alderney Law, 2008**
- 2. The Family Proceedings (Guernsey and Alderney) Rules 2009**

QUESTION 1**(25 marks)**

You have been consulted by Andrew, who shows you a court order dated yesterday which is an ex parte order under S15 of the Domestic Proceedings and Magistrates Court (Guernsey) Law, 1988. The applicant is Bettina, the mother of his child Carol aged 5 years. The order is an interim order and it expires on the next review date in 4 weeks' time, and the order includes a number of prohibitions on Andrew including preventing him from contacting Bettina and Carol "*at all and in any circumstances*" When you read the statement attached to the order Bettina has said that Andrew has been regularly violent to her throughout their relationship and that the last occasion of violence was 3 weeks ago when she sustained a black eye from Andrew who had visited her at her home, under the influence of alcohol. You take instructions from Andrew and he denies the allegations "*it's all a lie*" and he tells you that he believes Bettina has done this to stop Carol's contact with him because Bettina is now in a relationship with Darren, and he also tells you that people on facebook have been saying that Darren has just been arrested for downloading child pornography.

- (a) What issues do your instructions raise and what action do you advise Andrew to take?

(5 marks)

- (b) Bettina's application for a final order eventually comes before the court and you are instructed to oppose the application. Please advise Andrew in writing of the likely procedure the court will follow at such a hearing.

(5 marks)

- (c) Despite your best endeavours, the court grants Bettina's application for a domestic violence injunction until 1st May 2017. Draft the court order, using standard terms that such an order is likely to contain.

(8 marks)

- (d) A week after the final order is made you are telephoned by the police because Andrew has been arrested for breaching the order. You attend the Magistrates court next day and Andrew instructs you that he was arrested because he was found in Bettina's garden, when he was prohibited from being there. He instructs

you he only went because Bettina had telephoned him and had asked him to come over to meet with her. Bettina's advocate tells you that Bettina denies telephoning him. What advice do you give Andrew on the procedure in the Magistrates Court? Include in your advice the procedure that the morning's hearing will follow – he wants to know if he will get out "*on bail*" because he will lose his job if he is kept in custody. What do you advise him?

(7 marks)

QUESTION 2

(25 marks)

You act for Ethel, the maternal grandmother of Fred who was born in 2012. Fred's mother and Ethel's daughter is Gloria. Gloria never looked after Fred, as he had been made the subject of an Emergency Protection Order immediately after his birth because of Gloria's difficulties arising out of a long standing drug history. Fred was subsequently made the subject of Interim Community Parenting Orders and when Fred was three months old, the Magistrate's Court granted a Community Parenting Order based on a child's plan for adoption. Gloria failed to attend any of the court hearings including the final hearing. She also consistently stated that she did not know who Fred's father was. Ethel lives in England and her instructions to you are that she had not known of Fred's existence until last month when she was contacted by a social worker who had wanted to know if she knew where Gloria was. In fact Gloria sadly died last year. Fred has been placed with an adoptive couple Mr and Mrs X who have made an application for the adoption of Fred. Fred has lived with them for the last 18 months.

Ethel does not want her grandchild to be adopted and is desperate to be able to bring him up herself. She is 75 years old, in good health and has another three grandchildren whom she helps look after from time to time when her son and daughter in law ask her to do so because they both work full time. Ethel instructs you that she is a very wealthy woman.

- (a) On this history what advice do you give Ethel – what are the legal avenues available to her? (10 marks)
- (b) In due course the application for Fred's adoption is heard and you are representing Ethel in those proceedings. Advise her on the following:-
- (i) Who will be the likely parties to the application?
 - (ii) What test or tests will the court apply to the application before it and explain the legal basis for your answer.
 - (iii) Ethel would like to know the details of Mr and Mrs X – is that possible?
 - (iv) Who will be responsible for making the decision?
 - (v) Ethel tells you that if the adoption application succeeds then she wants Fred to have contact with her – what legal advice do you give?

(vi) Immediately prior to the final hearing Ethel tells you that she has been told by her doctor that she has a serious illness which means she will have to take medication for the rest of her life but as long as she takes the medication she will be able to live a full life. She tells you that she does not want the other parties or the court to know her personal business and that you are not to tell them. What advice do you give her?

(15 marks)

QUESTION 3

(25 marks)

(a) You are consulted by Helier in respect of a Consent Order for financial Provision made 2 years ago. The relevant terms of the Order, which was presented to the court and signed by the Judge are:

- (i) A monthly payment of £1,500, index-linked on Guernsey R.P.I. for the maintenance of his then wife, Ida;
- (ii) Monthly payments of £750 each for two children of the family: Kelly (11) and Leo (8), with the normal duration;
- (iii) Payment of a lump sum to Ida, total £50,000 at £5,000 per year for ten years;
- (iv) Upon the sale of the former matrimonial home, equity now £300,000. Ida to receive 90% of the net proceeds, Helier 10%. The sale is now pending.

At the time of the Consent Order Helier was a prosperous property developer, but his income has now dropped by about 50%, as have his assets. This is due to a fall in the market. Helier has now re-married Marie, a widow with three small children, with no income of her own beyond States' benefits. Helier now wishes to vary the Orders to halve the periodical payments and the lump sum, as well as increasing his share in the house sale to 50%.

You consider the Consent Order and the copy correspondence Helier shows you. He was at no time legally represented, but Ida was represented throughout. The Order contains the statement: "*The Respondent (i.e. Helier) has not been legally represented and understands he was able to take legal advice, but wishes to proceed*".

You listen to a tape of the (rather short) hearing, in which the Judge goes through the terms of the Order, asks Helier if he understands them and agrees. The answer throughout is affirmative. He is asked to confirm he is not legally represented, but not if he has taken legal advice. Ida remarried six months after the date of the Consent Order, the new husband is a retired tax accountant living in a large open-market house. Helier was not aware of the intention to re-marry and, in fact, tells you Ida had expressly denied any such intention at the time of the Order.

Advise Helier

(15 marks)

(b) When considering an application to vary a financial provision Order (i.e., one made by a court), what principles will a Guernsey Court apply?

(7 marks)

(c) Describe the procedure of the hearing of the application.

(3 marks)

QUESTION 4

(25 marks)

(a) You are consulted by Nev, who is aggrieved by a decision of the Magistrate's Court. He had a brief affair with Olive and she has had a baby, Priscilla, now aged 3 months. He was summoned under the *Loi relative à l'entretien des enfants illegitimes* of 1927, as amended and came to court, where in due course a hearing took place with evidence called. Olive was represented by an Advocate. Nev did not see why he should pay for one. Nor did Nev see why he should be compelled to undergo DNA testing, so he refused. He called another man who had been having intercourse regularly with Olive during the material time, whilst Nev and Olive had only slept together once. In evidence, Olive denied ever having intercourse with the other man. In an oral decision, the Judge of the Magistrate's Court found:

- (i) Olive was at times confused, but on the whole an honest witness;
- (ii) Nev was shifty and evasive; and
- (iii) The other man was unconvincing.

Also, the judge found that the fact that Nev had refused tests was indicative of responsibility and tended to bear out the allegation he was the father. An award of £25 per week, plus RPI was made, together with £100 towards the costs of the birth and a pram.

Advise Nev, particularly on which tribunal will deal with the appeal and its likely approach, as well as indicating his practical chances. (10 marks)

(b) You are next consulted by Quentin who has received an application from his former wife, Roxanne. Following an uncontested divorce, it was found that large debts had been run up during the marriage. Roxanne was responsible for £150,000. Quentin has already paid £50,000 separately and £20,000 negative equity on the former matrimonial home and will also pay £30,000, representing half of the debt accrued on joint credit cards. Roxanne applies under Articles 46 and 47 of the Matrimonial Causes (Guernsey) Law, 1939 for "*a more equitable distribution*" of the debts, so that Quentin pays a lump sum or periodical payments to Roxanne or directly to the creditors to ensure the amounts owed are paid off. Quentin is a certified accountant and director of a trust company, Roxanne a veterinary nurse. The children are grown-up. The

evidence shows Roxanne was a big spender during the marriage and the extent of the debts came as a nasty surprise to Quentin.

Advise Quentin:

- (i) Is the action by Roxanne justiciable? Will the court entertain it? And
- (ii) What approach is the court likely to take? (10 marks)

- (c) Sharon comes to see you in an upset state, having been served divorce papers on behalf of her husband, Talbot. They have been married for five years and there are no children. The ground put forward is Sharon's alleged "unreasonable behaviour". You note that the particulars of the allegation allude to Sharon's continued refusal to have sexual relations on Fridays and during Lent, her pre-occupation with allegedly excessive religious practices and participation in long pilgrimages off-Island and away from Talbot. Sharon accepts these facts, but counters by saying Talbot has an excessive sexual appetite and regularly sought to have sexual intercourse in a variety of inappropriate places (such as the car-park outside church) and times. In addition, she has a firm and unequivocal religious scruple about agreeing to divorce in any shape or form, and still loves her husband.

How would the Guernsey Court approach the question of "unreasonable behaviour" in such a context? (5 marks)