

GUERNSEY BAR EXAMINATION

9.30AM, 26 APRIL 2018

PAPER FOUR

FAMILY LAW

THREE HOURS

CANDIDATES ARE REQUIRED TO ANSWER ALL QUESTIONS

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

- **Question 1 – 30 MARKS**
- **Question 2 – 25 MARKS**
- **Question 3 – 25 MARKS**
- **Question 4 – 20 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)**

MATERIALS PROVIDED:

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

QUESTION 1 (30 marks)

- 1.1 You are consulted by Alan whose wife Beryl left him last week. He tells you that she has taken their children Colt (aged 8) and Darryl (aged 5) with her and that they have moved into temporary accommodation.

Alan is concerned that Beryl may leave Guernsey with the children because she has relatives in England and she has no relatives in Guernsey. He tells you that Beryl has not threatened to take the children to England but he is worried that she might. What advice do you give Alan? Please include your analysis of the law and what action you advise that Alan should take.

(5 marks)

- 1.2 Three months later Alan seeks your advice again. He tells you that in the last three months he has seen the children on just one occasion and that his wife insisted that her mother be present on that occasion. He shows you a letter from his wife's Advocates wherein they tell him that their client has alleged that he was very violent during the marriage both towards her and towards the children, and they refer to a 2016 conviction in the Magistrate's Court when he was convicted for assault of his wife and received a three month sentence of imprisonment. Alan instructs you that he wants to see his children on his own and if his wife will not agree, he asks you to take whatever legal action would be necessary. Alan tells you that all the allegations are lies, the conviction was an error and his wife had started the argument anyway. He also tells you that he has started living with a new partner, Ethel, who had moved into the family home but she left yesterday after calling the police having to complain that he had assaulted her having drunk too much alcohol after he received his wife's Advocates' letter. Alan tells you that Ethel is as '*good as gold*', she won't tell anyone what happened, and in any event it was her fault because she knew that he was upset over not seeing the children.

What legal advice do you give Alan? Please include the relevant law that applies to his instructions. Explain what application(s) you can make on Alan's behalf and to which court, setting out the likely procedure and directions the court will consider during the course of the application – from its commencement to final hearing.

(18 marks)

1.3 You are consulted by Frederick who has received a divorce petition based on the fact of two years' separation and consent. He instructs you that he and Gretel were married for 35 years and that she left him 12 months ago to live with another person. When you look at the divorce petition it states that the parties were married in the Elvis Presley Chapel in Las Vegas in 1982 and that they had been separated for 5 years (*'since at least September 2012'*). What advice do you give Frederick about the petition, including:-

- (i) Whether any issues arise from the venue/place/country of marriage;
- (ii) The relevance of the apparent differences in his instructions to you in respect of the length of his separation from his wife;
- (iii) If Frederick says that he wants to defend the divorce because he wishes to divorce her on the basis of her adultery. What legal advice do you give, including the law and the procedure?

(7 marks)

QUESTION 2 (25 marks)

2.1 It is a Saturday morning and you are at home when you receive a telephone call from your senior partner asking you to attend the Magistrate's Court urgently as Howard, one of the firm's clients, has been arrested for breach of an injunction under S15 (1) of the Domestic Proceedings and Magistrate's Court (Guernsey) Law, 1988 as amended. You rush to court. You are told by India, the Deputy Greffier, that the Judge has been waiting for over an hour and that she has missed her tee time on the golf course already and she wants you to be ready to deal with the case in 10 minutes. You have never met Howard before.

Please answer:-

- (i) Where do you expect to meet with Howard?
- (ii) What do you need to know before you meet Howard and, who or where do you go to in order to find out that information?
- (iii) Will you be ready in 10 minutes and if not what can you do about it?
- (iv) If Howard tells you that he is wholly innocent of any breach of the injunction what legal advice do you give him, including who has to prove what and to what standard?
- (v) If Howard tells you that he did breach the injunction as alleged, what legal advice do you give him?
- (vi) Howard recognises that you are one of the junior advocates and tells you that you have to seek an adjournment so that Keith the senior partner can represent him. What advice do you give?
- (vii) Do you expect to receive a copy of Howard's convictions, if any?
- (viii) The court decides to not proceed with the case that day – and Howard wants to know if he will be able to leave the court building immediately thereafter. What advice do you give him?

(15 marks)

2.2 You act for Lofty who has an admitted cannabis addiction and is currently a client of CDAT's. Lofty is the father of a child, Myra (aged 3), who lives with her mother Nancy. Lofty and Nancy do not live together. Lofty instructs you that Myra had regular contact with him until 6 months ago when Nancy told him that until he was clear of drugs she would not allow him to see Myra. Your client has a number of convictions for possession of cannabis, and last came out of prison 4 years ago, having served 4 months for his 5th conviction for possession of cannabis.

You have issued an application on behalf of Lofty, and Nancy's advocate is asking that your client undergo drug testing and that he be assessed by an expert as to his capacity to care for Myra when she is in his care. Nancy tells the court that Myra has told her that she does not like her dad's friends when she visits him at his flat, that they smoke a lot and watch things on TV she doesn't like.

- (i) Advise your client as to the likely nature of any proposed assessment and its purpose;
- (ii) Draft the likely court order dealing with the instruction of such an expert.

(10 marks)

QUESTION 3 (25 marks)

3.1 You act for Orianna in her divorce from Peter. They have 3 children, Quentin (aged 17, and soon to go university), Rex (14 and at private school) and Sophy (11 also at private school). Orianna and Peter have been married for 3 years and their children were therefore all born before the marriage.

Orianna has not worked since Quentin was born. She has an income of approximately £20,000 per month as she is the beneficiary of a trust. Orianna's widowed mother has sadly been diagnosed with a serious, possibly life-threatening, illness and if and when she dies Orianna will inherit £50 million.

Orianna and the children live in an open market home worth £2 million. Peter has moved into a smaller cottage in the same grounds.

Peter is the CEO of a financial institution. He earns £10 million per annum and has a substantial art collection which is mainly in storage in the UK but Orianna is uncertain what it contains as it was left to him just before they were married by his father after his father's death. She believes that there is at least one Picasso painting although Peter has always told her that its authenticity is disputed; she believes that it is the only picture from the collection that is currently in Guernsey and that it is hanging on his living room wall in his cottage.

Orianna tells you that both she and Peter signed what she describes as a contract just before they were married in which she agreed to give up her claim to Peter's art collection if she and Peter were to ever divorce. She had done so on Peter's insistence because the art collection had been in Peter's family for over 40 years (it had been mainly collected by Peter's grandfather). She tells you that she does not have a copy of the contract but Peter's Advocate will have a copy as she signed the document in his offices in front of him and Peter.

Please advise Orianna:-

- (i) What is the legislation that applies to the resolution of a family's finances in a divorce?
- (ii) What are the general principles that the court will apply to the financial resolution in this case?
- (iii) Can you identify any issues in Orianna's instructions that give rise for potential issues in the resolution of the family finances? What are those issues and what advice do you give about those issues?

- (iv) What documents will the parties have to file before a FDR hearing? Explain what the purpose of an FDR hearing is and advise Orianna as to the court procedure at such a hearing?

(15 marks)

- 3.2 You have been consulted by Tina who is the mother of Ursula, aged 6. Tina gives you a piece of paper dated from last week which refers to Ursula being made subject to a Care Requirement, with conditions that Ursula live with foster carers and that Ursula's contact with Tina is to be supervised. Tina is upset and wants her daughter to come home and asks you what she can do.

You ascertain that Tina was present but not represented at the hearing when the decision was made to remove Ursula from her care and that she had not known in advance of the hearing what was going to happen. She tells you that it came as a surprise to her when she was told what was going to happen.

You ask Tina why she thought the child had been removed from her care and she tells you that '*those social workers*' say her child has lice and that Tina drinks too much so she cannot look after her child. She says that '*I only left Ursula alone overnight once but I locked the door to her bedroom so she could not get out of the flat – she was ok and safe and sound when I got home*'.

Write a letter to Tina setting out your advice on her instructions, and help her to understand what has happened referring to the relevant law and procedure and your advice as to what should and/or will happen next.

(10 marks)

QUESTION 4 (20 marks)

- 4.1 “In summary, therefore, there may well be cases in which a *Mesher* Order would be suitable, but in most cases an alternative form of order will probably be preferable” (Bird and King: Financial Remedies Handbook).

Discuss, with reference to relevant Guernsey case law.

(8 marks)

- 4.2 You act for Velma who comes to see you about a consent order made in Matrimonial proceedings in 2017. The order was made on the basis that the matrimonial home was worth £500-550,000. Early this year it was sold for £750,000. Velma wants to know what her chances are of appealing out of time. You did not act for her when she signed the order and she did not have any other Advocate. The order states that she had been advised of her right to have separate legal representation, but had declined to do so. She agrees that was the case.

Advise her.

(6 marks)

- 4.3 Wooster consults you early on in a matrimonial case where there are a large number of assets to consider. Despite your best efforts, including mediation and an initially promising FDR it went to trial with complex accounting evidence. The judgment is handed down, but does not deal with two important items: a painting of a former Bailiff and a set of rare postage stamps, valued together at £60,000. Furthermore, the only case cited is White v White. Wooster is very upset by what he regards as a faulty judgment. Your counterpart, representing the wife, Xenia, refuses to do anything as Xenia holds the items and, as nothing was said about them in the judgment, she will keep them. There is a Court of Appeal sitting a month later.

Advise Wooster what action he could take.

(6 marks)

END OF PAPER