

# **GUERNSEY BAR EXAMINATION**

**9.30AM, 23 MAY 2019**

## **FAMILY LAW**

**THREE HOURS**

**CANDIDATES ARE REQUIRED TO ANSWER ALL QUESTIONS. THE MARKS AVAILABLE FOR EACH QUESTION ARE SHOWN BELOW.**

- **Question 1 – 25 MARKS**
- **Question 2 – 25 MARKS**
- **Question 3 – 25 MARKS**
- **Question 4 – 25 MARKS**

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

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

**MATERIAL PROVIDED:**

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

## QUESTION 1 (total 25 marks)

Mary (aged 35) and James (aged 60) have been married for five years. They have one child, William, who is three. Mary and James have been drifting apart for some time and decided to separate six months ago. Mary has formed a new relationship with Oscar.

Mary and James have yet to agree arrangements for William, but they do agree that he will spend time with both parents but will live with Mary for most of the time. Mary and James lived throughout the marriage in James' property 'Dove House' that he has owned for thirty years. Dove House has been valued at around £2.5 million. Slightly reluctantly, James has moved out 'while things are sorted out'.

James is expecting to retire in five years' time; he has worked for many years in the finance industry and had a pension with a CETV of £1.2 million. He understands that he can take a lump sum out of his pension now if he would like to, but this would reduce his pension income quite significantly depending on how much he takes out. James owns shares in his employer, which he will be able to sell when he retires. The shares are currently worth about £1 million but the value fluctuates depending upon the financial performance of the business. Until he retires, James will continue to earn £150,000 net per annum. James has always had an annual bonus, which varies from year to year.

Mary and James have a joint account, which contains £500,000. Mary does not have an account in her own name. James has a savings account with £250,000 in it – all of this money was inherited from his own father following his death more than ten years ago.

Mary has not worked since William was born. Prior to that, she was a waiter earning around £20,000 per annum. Mary has wealthy parents who are aged 70 and 65 respectively, they are in good health.

The day before their wedding James gave Mary a document headed "pre nup". This document had been drawn up by James' family lawyer. It says that in the event of divorce James and Mary will share equally the value of any property in their joint names, that they will each keep the benefit of any property in their sole name and that neither will ask the other for spousal maintenance. Mary signed the document. She did not take any advice.

Mary and James are in the process of divorcing and they expect to have a decree fairly soon. The basis relied upon for the divorce was Mary's adultery with Oscar. Mary and James are now keen to try to resolve financial arrangements. You are advising James.

**Part A (11 marks)**

- 1.1 James tells you that the finances will be easy to sort out because all of the money is his anyway. With reference to statute and case law, what advice do you give James about the powers of the Court and the principles that will apply to ancillary relief?
- 1.2 What do you feel would be an appropriate settlement for Mary on the facts provided?

**Part B (2 marks)**

- 1.3 You know that Oscar works for a local bank and has an income of £100,000 and assets of about £500,000. You are now told that Mary plans to live with Oscar as soon as the divorce is over. Does this change your advice and, if so, in what way and why?

**Part C (5 marks)**

- 1.4 At what stage can James or Mary start an application for ancillary relief?
- 1.5 What documentation will you have to complete (i) to start ancillary proceedings and (ii) to deal with financial disclosure?
- 1.6 When will the court be able to make an order (i) for interim spousal and child maintenance and (ii) for the redistribution of capital?

**Part D (2 marks)**

You are in the process of sorting out financial disclosure. James tells you that Mary does not know about his shares. After all, what they will be worth in five years' time is anyone's guess. He tells you that he does not want you to mention the shares within his financial disclosure.

- 1.7 What are James' obligations?
- 1.8 What are your obligations?

**Part E (5 marks)**

- 1.9 Proceedings are now well underway and you are approaching the FDR hearing. Explain to James what an FDR is, what the procedure will be at the hearing and what documentation will be put before the court.
- 1.10 James is worried that he will be prejudiced by whatever the judge says at the FDR. What advice do you give him?

## **QUESTION 2 (total 25 marks)**

Emma and Barry have been married for a year. It has been a disaster from the very beginning. Shortly before the wedding, Emma found out that Barry was having an affair with her sister Jemima. Barry ended the affair and Emma decided to go through with the wedding because she was worried about upsetting her parents who had paid a small fortune in wedding costs. Immediately after the wedding, Emma caught Barry in bed with her bridesmaid Cheryl. Barry was drunk but Emma decided to give him the benefit of the doubt. For the last year they have lived together, and have both been on their best behaviour. Emma tells you that Barry has done his best to make the relationship work. However, two weeks ago, they agreed that Barry would move into the spare room. Despite their best efforts, Barry and Emma agree that they are just not compatible. Since then, Barry and Emma have lived separate lives. They are sure that their marriage is over but they want to stay friends for the sake of their pet cat, Jumbles. They cannot move to separate accommodation until they have found a buyer for their jointly owned home, as neither of them can afford to contribute to the mortgage and pay rent. They do not cook or clean for each other, and they each pay half of the bills.

### **Part A (1 mark)**

2.1 You receive a phone call from Emma. She wants you to represent both her and Barry in any family proceedings, saying that they are 'the best of friends'. What do you tell her?

### **Part B (7 marks)**

2.2 Emma would like to start proceedings now to end the marriage. Can she do so? Explain your answer by reference to statute and case law.

### **Part C (7 marks)**

Just a week after she first instructed you Emma asks you for some additional advice. Emma tells you that they have found a buyer for their home and the sale will go through "super quick". They have agreed to pay off all their debts with the proceeds of sale and to split what is left down the middle. They both have good jobs and do not need any financial help from each other. Jumbles will live with Emma and Barry (as they are still friendly) will pop in to say hello to Jumbles whenever he wants to. Emma and Barry are keen to sort out their finances formally before the sale of their home goes through. Emma has written down their agreement and they have both signed it. Their neighbour has witnessed it.

Answer the following questions, justifying your answers by reference to statute and case law:

- 2.3 To what extent could Emma and Barry be bound by the agreement that they have signed?
- 2.4 Is there anything further that Emma and Barry could do to achieve a legally binding agreement before their house sells? If there is, describe the procedure they could follow and the documentation required.

**Part D (10 marks)**

A few weeks later Emma is on the phone again. She tells you that she has had a problem with Barry. Barry got drunk yesterday evening and asked Emma for a reconciliation. When she declined, Barry grabbed Emma by the throat and accused her of having a new partner. He muttered, "If I can't have you, nobody will" before he let her go and left the house. Emma was scared but because Barry left the house, she did not call the police. Barry slept on his mum's sofa. The house sale is due to go through in two weeks' time. Emma believes that Barry will go through with the sale as he needs the money, but she is worried that he may turn up at the house before then. Barry was very apologetic when he rang her this morning, but he is currently drinking more than he should and is not himself.

Emma asks you for advice. She is worried that she is getting wound up over nothing, and there has only ever been this one incident - but she admits to being a 'bit scared' of Barry. Answer the following questions:

- 2.5 Do these events cause you to revisit your advice in response to Part B 2.2 above?
- 2.6 What application if any can Emma make to try to prevent further incidents at the home before the sale goes through?
- 2.7 If Emma instructs you to proceed with an application, what will the procedure be, what documents will you have to produce and which Practice Direction must you comply with?
- 2.8 Draft the order that you intend to present to the appropriate Court.

### **QUESTION 3 (total 25 marks)**

Andy and Barbara have never been married, but have lived together for ten years. They have a son, Charlie, who is three years old. Barbara is pregnant with their second child, and is due to give birth in two months' time. Barbara and Andy had a big row last week and Andy moved out. They are not on speaking terms at the moment. Andy is named on Charlie's birth certificate as his father, but he is not sure whether Barbara will want to put him on the baby's birth certificate. When he moved out, Barbara told him that she was going to move back to England with the children to live with her mum. Andy is worried that Barbara may follow through with her threat, or that she will otherwise make it hard for him to see the children. Andy is close to Charlie, who has a physical disability.

Andy works as a builder and earns about £500 per week. Barbara works in an office and earns about the same, she will have some paid maternity leave. They have no assets to speak of, but Barbara does have a credit card debt of £200 which she has incurred buying stuff for Charlie and the baby.

You are advising Andy.

#### **Part A (6 marks)**

Answer the following questions (refer to legislation and/or to case law where appropriate to support your answer):

- 3.1 Who has parental responsibility for Charlie?
- 3.2 Will Andy have parental responsibility for the baby when it is born and, if not, how can he get it?
- 3.3 Explain to Andy what parental responsibility means, using language that he is likely to understand.

#### **Part B (3 marks)**

- 3.4 Andy is keen to understand whether Barbara can take the children to live in England without his permission. What is your advice as to the legal position and what action, if any should Andy take?

#### **Part C (5 marks)**

- 3.5 If Andy cannot agree parenting arrangements with Barbara, what action can he take to secure contact with Charlie and with the baby after it is born?
- 3.6 What form will you need to complete to start proceedings?
- 3.7 What principles will the court apply if there is a contested contact application?

**Part D (3 marks)**

It is three months later. The baby has been born and is healthy. Things have settled down and Andy and Barbara have been able to agree contact arrangements. Barbara is happy that the children will stay in Guernsey, and Andy is going to be seeing them regularly. You are drafting a consent order when Andy forgets himself and tells you that he used to hit Barbara from time to time when he was drunk, the last occasion being when she was pregnant with the baby. He is glad that this is all behind them. He sees the expression on your face and he tells you not to mention it to anyone, there is no need to rock the boat. Barbara is “a good girl really”, and she will not say anything if he tells her not to. None of the incidents were reported to the police.

3.8 What are your obligations in this situation?

3.9 What must you do when you submit the consent order to the Court?

**Part E (8 marks)**

Andy wants to know what financial provision he will have to make for Barbara, Charlie and the baby. Answer the following questions, stating what legislation will apply:

3.10 Will Andy have to make financial provision for (i) Barbara and (ii) the children?

3.11 Which court will deal with any application for maintenance that Barbara makes, and what orders can that court make in this situation?

3.12 What principles would you expect the court to apply when it decides how much money Andy should give Barbara?

3.13 How much do you think Andy will have to pay?

#### **QUESTION 4 (total 25 marks)**

You are appointed to act for Sarah. Sarah is a 22 year old woman with a mild learning disability. Sarah can read and write but she struggles to understand complicated issues. Sarah grew up 'in care' and she has struggled in the past with drink and drug addiction, she tells you that she is now taking methadone and thinks she is "ok". Sarah has a five year old son, Nathan who has lived with her from birth. Sarah is single and is not sure who Nathan's father is. She lives with her boyfriend Bobby. Sarah knows that he has been in trouble with the police all his adult life, but she does not know why. There have always been concerns about Sarah's care of Nathan and recently Sarah has been finding it very difficult to cope. She has been drinking "a bit". Nathan has missed school quite often, and the staff have been worried that he is going to school with dirty clothes. His hair has not been washed, and he smells unpleasant. Nathan has been soiling at school and seems miserable. Recently, the headmaster found Nathan searching through a bin at lunchtime looking for food. Nathan told him that his mummy was too tired to go to the shop. Nathan is slipping behind at school.

Sarah's mum Joely (aged 60) has been an important person in Nathan's life, but she and Sarah had a big falling out a few months ago and Sarah has stopped her from seeing him. Sarah admits that Joely was a great help and that Nathan loves her. He had been staying at Joely's home for several nights each week. Joely has significant physical and mental health problems, and all of her children were brought up 'in care'. Joely doubts that she could cope with a five year old.

A week ago, Sarah received a visit from a social worker. Sarah admits that the home was a "tip" and the social worker found some drug equipment in a cupboard. Nathan was very upset during the visit and told the social worker that mummy drinks and he cannot wake her up in the mornings. He also told the social worker that Sarah's friend, Bobby, is mean to him and hits him with a belt. He hits Sarah too. The social worker asked to see Nathan's bedroom and Sarah tells you that there were no sheets on the bed because Nathan wets the bed at night and she does not want to spend her life washing sheets. She also admits that Bobby had removed the only light bulb in the room. She knows Bobby is too strict, but he is the love of her life and she cannot do without him.

Sarah agreed that Nathan could go "into care" for a few days just so that she could have a break. He is put into a foster placement where he is doing well. Yesterday, the social worker rang and told Sarah that "services" were going to go to court to get an order to make sure that Nathan does not come home to her. They think that Sarah will never be able to take proper care of him.

Answer the following questions, supporting your answers by reference to statute and case law:

**Part A (8 marks)**

- 4.1 Can Sarah demand that Nathan is returned to her care? What advice do you give her?
- 4.2 Explain the difference between a child “in need” and a child “at risk”. Which of these descriptions is most likely to apply to Nathan at the moment?
- 4.3 Sarah decides that she wants to leave Nathan in his foster placement. She feels that she cannot care for him right now. What type of proceedings is it likely the Committee will bring and why? Explain to Sarah what this means and what will happen.

**Part B (6 marks)**

The Committee decides to apply for an interim order, so that Nathan will remain in his foster placement until the case comes to an end:

- 4.4 Which Court will hear the application?
- 4.5 What must the Court be satisfied of before making the interim order?
- 4.6 If the interim order is made, who will have parental responsibility for Nathan?

**Part C (3 marks)**

It is four weeks later, Sarah has not seen much of Nathan and she wants to have more contact. The social worker has said that they are too busy to arrange additional contact for her.

- 4.7 Can Sarah apply for increased contact with Nathan? Under which provision will the application be made and what principles will apply?
- 4.8 When should Sarah make her application?

**Part D (8 marks)**

Unfortunately, the stress becomes too much for Sarah and she disengages from the proceedings, the social worker believes that she and Bobby have left the Island. Joely calls you to say that she has thought about it and now thinks she can take care of Nathan. The final hearing date is fast approaching.

- 4.9 What can Joely do, if anything?

- 4.10 The Committee intends to apply for a community parenting order. Explain to Joely the principles that the court will have to consider when it decides what order to make. What do you think the outcome of the case will be?
- 4.11 If one of the parties is unhappy with the outcome of the final hearing, can they appeal and what time limit will apply?

**END OF PAPER**