

**GUERNSEY BAR EXAMINATION**

**9.30AM, 19 MAY 2022**

**PAPER FOUR**

**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**

**MARKS WILL BE GIVEN FOR REFERENCES TO APPLICABLE LEGISLATION AND CASE LAW.**

**PLEASE ENSURE THAT THE FOLLOWING IS CLEARLY MARKED ON EACH PAGE OF YOUR ANSWER SCRIPT:**

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

**MATERIALS PROVIDED (all consolidated texts, where applicable):**

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

## QUESTION ONE (total 25 marks)

Adam and Beth have been married for 30 years and are both 55 years old. They have three grown up children. The marriage did not get off to a good start. Beth was suffering with depression at the time of the wedding and Adam only talked her into going through with it because she was pregnant. Over the years Adam has had a series of affairs, the last of which came to an end three months ago when Beth found out and became very upset, chopping up all of Adam's business suits and sending an email to his work colleagues which was highly embarrassing. Adam has been grumpy with Beth ever since, but they have continued to share a bedroom and to live as a married couple. Beth has become increasingly unhappy and four weeks ago she began a sexual relationship with her personal trainer, Chris. Adam does not know about the affair yet, but he accepts that the marriage is over and moved out this week.

Adam has been the high earner during the marriage and expects to work to normal retirement age; Beth took care of the children and has not worked for many years. Adam has frequently reminded her that he made all the money. They have a jointly owned home, worth around £650,000 with no mortgage. Adam has a bank account where he has saved an inheritance of £250,000 that he received two years ago. They have no other significant assets. Adam now earns £200,000 per annum (net) and is due to receive an annual bonus of £50,000 this year. Adam took Beth out for a boozy lunch a week ago and persuaded her to sign a document headed "*post nuptial agreement*" which says that the house will be sold, that Adam will get 80% of the proceeds due to his financial contribution to the family, and that neither of them will pay spousal maintenance to the other. Adam has now stopped contributing to the joint account.

Beth is panicking and comes to see you. She would like your advice on the following points:

- 1.1 Whether she can bring an end to her marriage and, if so, how you will go about it. **[10 marks]**
- 1.2 How short and long term matrimonial finances can be resolved and what procedure you will follow. **[15 marks]**

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

David and Emma have never been married. They have two children Freddie (born in September 2007) and Garry (born in January 2012). David is named on the birth certificate for both children. David and Emma split up six months ago and have been arguing about the children ever since. David lives in a spacious one bedroomed flat. The children are living with Emma, who will not allow David to have them overnight, citing David's limited accommodation, his long working hours and his excessive drinking. David wants to have the children 50% of the time and has installed bunk beds for the children in his living room. He says he only drinks occasionally and will stop if needs be.

Freddie wants to spend time with both of his parents, but he is sick of the fighting and is spending a lot of time at his Gran's house. Gran would be very happy for Freddie to live with her. Garry has asthma and has been offered a Covid vaccination. David would like him to have it, but Emma refuses. She does not believe in Covid. David and Emma cannot agree which secondary school Garry should go to.

You are asked to advise David in relation to the following:

- 2.1** Does David have parental responsibility for the children and, if not, can he get it? **[3 marks]**
- 2.2** What can David do to sort out residence and/or contact arrangements for the children, and what principles will apply? **[7 marks]**
- 2.3** What, if anything, can be done about Garry's vaccination and his education, and what principles will apply? **[7 marks]**
- 2.4** If David wants to issue proceedings, what procedure will you follow? **[4 marks]**
- 2.5** What, if any, applications can Gran bring, and what are her chances of success? **[4 marks]**

### QUESTION 3 (total 25 marks)

Harry and Sally have a tumultuous relationship. They have been married for four years. They have a son who is one year old. Sally wishes to end the relationship. Harry suffers with poor mental health and has threatened Sally on a number of occasions. A month ago he thumped her, giving her a black eye, while she was holding the baby. The family live in rented accommodation, the tenancy is in Harry's sole name and he pays the rent. Harry has a disability that affects his mobility, the home has been adapted for him and it would be difficult for him to find alternative accommodation, even if he could afford to leave.

Sally is prepared to leave the family home with the baby and has support from her family - but she is concerned that Harry will try to follow her. Sally would like to draw a line under the marriage, but she is a committed catholic and does not wish to divorce. Yesterday, Harry told Sally that he will kill her and the baby if she tries to leave him or take him to court. Sally wants your help but does not want you to tell anyone that Harry gave her a black eye.

Sally instructs you:

- 3.1 What proceedings, if any, can Sally bring to '*draw a line under her marriage*' without divorcing, what will the procedure be and how will any proceedings be served on Harry? **[7 marks]**
- 3.2 What order[s] could be obtained to keep Sally and the baby safe, and what procedure will you follow? **[7 marks]**
- 3.3 Do you keep quiet about Sally's black eye? Justify your position. **[3 marks]**
- 3.4 Draft the order. **[8 marks]**

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

Clarke is 13 years old, he has stopped going to school and is now in trouble with the police. He currently lives with his mum, Martha who has a significant history of drug and alcohol misuse and who has recently been in an abusive relationship with Thor. Clarke spends time with his grandfather every week, but he is frail and is not able to offer Clarke a home. Last week, Clarke became very distressed after a row with Thor, who hit him with a hammer, and Clarke stole and crashed their neighbour's moped. Worried about the police, Thor has left the family home and run off back to his home country of Asgard. It is unclear whether he plans to return to Guernsey. Clarke spent a night sleeping rough before the police and Martha found him sheltering in a car park. The neighbour does not want to press charges, they are very worried about the family. They have heard Thor shouting at Clarke, and Clarke has been locked out of the house a couple of times. They say that Martha drinks during the day.

The social worker (Ms V. Nice] has spoken to Martha. Ms Nice has indicated that she would like Clarke to stay at home, but this will only be possible if social services can do a full assessment of the family, and Martha can work with professionals to keep Clarke safe. Ms Nice has said that the situation is too serious to be managed outside of legal proceedings. Martha does not like social workers and is reluctant to have them in her home. Martha wants Thor back as soon as possible, he has learned his lesson. She denies drinking during the day and says her neighbour is a busy body. Clarke wants to stay in Martha's care.

You have been asked to provide Martha with some advice. Advise Martha on the following:

- 4.1 What kind of proceedings are likely to be brought in this situation and why? **[6 marks]**
- 4.2 What will the procedure be and who will be involved? **[7 marks]**
- 4.3 What principles will apply, and what advice do you give Martha in terms of her position? **[10 marks]**
- 4.4 If Martha does not like the outcome, will she be able to appeal? **[2 marks]**

**END OF PAPER**