

GUERNSEY BAR EXAMINATION

9.30AM, 14 MAY 2020

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)

Amy and Barry have never been married. They have one child, Christopher, who was born in 2007. Christopher has autistic spectrum disorder and a learning disability. Amy and Barry split up a year ago and have not been able to agree arrangements for Christopher. Amy is reluctant to let Barry have Christopher overnight, because she is not sure if he will cope. Barry is adamant that he can care for Christopher and would like to have Christopher to live with him for half the time. Following the COVID-19 emergency being declared, Amy is now saying that Barry can't have any contact with Christopher because he has to stay at home with her. Christopher does not cope well with telephone contact. Both parents would like to have court orders in place to cut down on arguments. Amy would also like to be able to stop Barry from taking the case back to court in future, because she finds the whole thing very upsetting.

Please answer the following questions:

- 1.1 Who has parental responsibility for Christopher at the moment? **(1 mark)**
- 1.2 What advice would you give to Amy about the impact of COVID-19 on Barry's contact with Christopher? **(2 marks)**
- 1.3 What applications can Barry make to the court? **(2 marks)**
- 1.4 What applications can Amy make to the court? **(2 marks)**
- 1.5 What principles will the court use to determine those applications? Apply those principles to the facts and advise (i) Amy and (ii) Barry **(10 marks)**

It is 6 months later. The Court has heard the case and decided an outcome. Christopher is going to live with Amy. Barry will have parental responsibility for Christopher. During school term time Christopher is going to stay with Barry alternate weekends (Friday 5pm until 8am Monday morning). Christopher will spend half of each school holiday with each parent.

- 1.6 Draft the order. **(8 marks)**

QUESTION 2 (total 25 marks)

David was born in Guernsey. He left the Island two years ago for work, but returned 9 months ago. He regards Guernsey to be his permanent home. David married Emma 18 months ago in Jersey. They split up when David returned to Guernsey. David had been unable to settle in Jersey and had experienced problems with his mental health. He only went through with the wedding because his parents placed a bit of pressure on him and Emma, who is an epileptic, started to cry when he threatened to back out. David accepts that there were times following the wedding when he treated Emma badly and, on one occasion he lost his temper and slapped her when he found out that she had been sleeping with his best friend prior to their marriage. Emma has been in touch with David recently and has told him that she has started a new relationship, and is pregnant by her new partner. They are both keen to 'draw a line' under the marriage and move on. David and Emma are financially independent of each other and there are no assets or debts to speak of.

Please answer the following questions:

- 2.1 Do David and Emma have a valid, void or voidable marriage? Explain your answer. **(7 marks)**
- 2.2 Does the Guernsey Court have jurisdiction to deal with proceedings in relation to this marriage? Explain your answer. **(2 marks)**
- 2.3 Set out what proceedings David can bring and on what ground(s). Explain your answer. **(7 marks)**
- 2.4 Set out (in outline) the procedure for bringing those proceedings, including service of the papers on Emma. **(7 marks)**
- 2.5 What is the likely time frame to resolve the proceedings, assuming that Emma does not contest them? **(2 marks)**

QUESTION 3 (total 25 marks)

Fred and Gertrude married 25 years ago, they are both 50 years of age. They have three children: Harry (aged 17), Ian (aged 13) and Jane (aged 10). All of the children are at fee paying schools. Fred is the managing director of a local building company and earns £150,000 (net per annum). Fred owns 30% of the shares in that company, and those shares have been valued at £500,000. Fred cannot sell those shares without leaving his employment. Gertrude has not worked since giving birth to Harry, she had previously worked for a trust company earning about £20,000 (net per annum). Fred and Gertrude have a jointly owned home "*Just Desserts*" which is worth about £500,000. The mortgage has been paid off. There are no joint debts, but Fred has a credit card debt of £10,000 that he has built up socialising with his work colleagues and clients. Gertrude comes to see you. She says that she has been unhappy for a long time because Fred is rarely at home. He is often drunk, and has hit her twice recently during arguments. Gertrude is considering separation and divorce. However, she wants to find out what the financial consequences of that would be before making a decision.

Gertrude has been told to come and see you by her elderly mother, Kerry, a well-established client of your firm, who provided a deposit of £200,000 when the couple purchased "*Just Desserts*". Nothing was documented. Kerry is very wealthy and is about to turn 85. Gertrude and the children are the sole beneficiaries of Kerry's will.

Please answer the following questions (supporting your answers with legal authority, wherever possible):

- 3.1 Is the Court likely to take into account Kerry's wealth and Gertrude's inheritance prospects? **(2 marks)**
- 3.2 What is the relevance of the £200,000 deposit payment, if any? **(3 marks)**
- 3.3 Advise Gertrude what powers the Guernsey Court has when resolving ancillary matters, what principles will be applied and what financial provision you feel a court would be likely to make for her and the children. **(15 marks)**
- 3.4 What orders, if any, can Gertrude apply for if she feels at risk of domestic violence? **(5 marks)**

QUESTION 4 (total 25 marks)

Larry (aged 13) is a real handful. Mandy, his mum, and Nigel, his stepdad, are finding it impossible to control his behaviour. Larry is regularly playing truant from school and has been caught shop lifting twice, but the shops agreed not to report it to the police. Last week Larry went missing for 48 hours and, when he came home, it was apparent that he had either been taking drugs or that he was drunk – or both. Larry is being very aggressive to Mandy and Nigel. Last week Larry hit both of his younger siblings (aged 10 and 8) during an argument over a game of Monopoly. Nigel over-reacted and hit Larry hard enough to knock him over. Larry fell and hit his head on a chair. He was drowsy afterwards and Mandy took him to hospital where the full story came out. A social worker speaks to Larry, Larry tells them that their next door neighbour has been sexually assaulting him and giving him drink. He says that Mandy and Nigel are never around and that he is spending a lot of time caring for his siblings. Larry wants to continue to live at home. Nigel is at the end of his tether and doesn't believe the sexual abuse allegation. Mandy is tearful and is taking anti-depressants. The social worker feels this is fundamentally a loving family, and would like to work with the family to keep Larry at home if possible.

Please answer the following questions (supporting your answers with legal authority, wherever possible)

- 4.1 Based on the facts given above, would you say that Larry is a child in need, or a child at risk? Explain your answer. **(2 marks)**
- 4.2 What statutory duty or duties, if any, do the States of Guernsey have to Larry at this stage? Explain your answer. **(3 marks)**
- 4.3 Is this a case where compulsory intervention may be needed? Explain your answer. **(3 marks)**
- 4.4 You are asked to advise Mandy. What, in your view, is likely to happen and who will be involved? What principles will be applied? **(15 marks)**
- 4.5 If Mandy does not like the outcome of this process, can she appeal? Explain why she can or cannot. If so, which Court or Tribunal can hear the appeal and why? **(2 marks)**

END OF PAPER