

GUERNSEY BAR EXAMINATION

9.30AM, 29 APRIL 2016

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)

MATERIAL PROVIDED:

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

QUESTION 1

(total marks – 30)

You have been consulted by Alan and Betsy who are a married couple. They are the parents of Castor, aged 2 years, who lives with them. Neither Alan nor Betsy work and they tell you that they have both have had drug addiction problems in the past but currently they say that they are both stable on a prescribed drug regime and they also tell you that they attend weekly appointments with their respective drug counsellors, and that everything “*is going well*”.

They show you a document that they have been given. They tell you that the people at ‘Briarwood’ had posted it to them and that they have been told to take legal advice on it.

The document that they give you is dated three months previously and is headed “Conditions of Referral(s) and Statement of Facts” and it also refers to S35 (2) (a) of The Children (Guernsey and Alderney) Law, 2008. In the body of the document the following facts are included: - (all dates referred to refer to the date of the document itself)

- That when the Health and Social Service Department’s social workers had visited Alan and Betsy in their home in the last 9 months, they have either been denied access to the home or they had been sworn at by Betsy after she had allowed them access to their home. On all occasions Castor had been present and that he had been seen to be upset by “*all the shouting*”;
- That on occasion Alan and Betsy had presented to the social workers as being under the influence of ‘illicit substances’;
- That on at least 2 occasions Alan and Betsy’s home had been very untidy and Castor had been seen eating food from the kitchen floor- “*he looked hungry*”;
- That on at least 3 occasions Alan and Betsy had not had any nappies for Castor and that the social worker had had to buy some for the child or else the child would not have had any;
- Neither of the parents are capable of budgeting their money/benefits and did not understand what a nutritious diet was for their child – that all Castor has been seen to eat was sweets, chocolate and sausages;

- That Alan presented as being obsessed with the TV series “Game of Thrones” and insisted on dressing up Castor in outfits which he thought were based on that programme and so Castor did not have any baby clothes – just clothes made for him in the Game of Thrones style by his father;
- On one evening in the last 3 months the parents had left Castor on his own in a play pen in their front room whilst they had gone next door to their neighbour’s home for an hour in order to attend a party. They had told the social worker about the party and they had said that Castor had been ‘ok’ because he had slept throughout the hour and in any event they had left him some caramel sweets for him to eat if he had woken up;
- On one occasion in the last 2 months Betsy had been seen with a black eye and when the social worker had asked her what had happened she said she had tripped and fallen in the street;
- The social workers are concerned that unless the parents fully engage with them, Castor’s emotional health will be prejudiced.

(1) Alan and Betsy ask you to explain to them what this document means and what is happening. They say they had not understood what had been happening. From the information you have (as above) please set out your advice to Alan and Betsy including (but not necessarily exclusively):-

- What process Alan and Betsy are involved in;
- The stages of that process from the beginning through to the end, and who would be involved at the different stages of the process;
- The purpose of the document and its legal basis;
- And what they and you should do now.

(8 marks)

(2) You telephone 'Briarwood' (the premises of the Children's Convenor and the CYCT) and speak to an Assistant Children's Convenor who tells you that because Alan and Betsy have not attended any meetings or hearings at 'Briarwood' then the matter has been referred to 'the Court' and there is to be a first hearing tomorrow. Advise Alan and Betsy on the following:-

- On what legal basis can the Children's Convenor refer this case 'to Court'?
- Which Court hears the case?
- Who will be the parties to the hearing?
- What will be the process at the hearing the following day?
- Draft the likely Court order from the first hearing?

(10 marks)

(3) You continue to act for Alan and Betsy who deny all the facts in the document ("*it's all lies*"). The matter is listed for a contested hearing. Despite your best advocacy all the witnesses who are called to give evidence confirm that the details in the above document are correct. In response your clients give evidence that what is alleged against them is not correct, save they have accepted that on one occasion when Castor was 6 months old, Alan had consumed some cannabis but they say that since then neither of them had tested positively for any other substances, save those they have been prescribed.

- Summarise the main points of your final submissions to the Court in respect of the law and otherwise.

(7 marks)

(4) Despite your best endeavours the Court finds the facts proven and the condition established under S35 (2)(a) of the Law. Draft the Act of Court arising out of those findings - with reference to the legislation.

(5 marks)

QUESTION 2

(total marks – 25)

- (1) You have been consulted by Diana, who shows you three documents, the first being an Act of Court from the Guernsey Magistrates Court dated some three years earlier, which states that Eddie, the father of her child Fiona, must pay her £30 a week until Fiona *'is aged 18'*. Diana tells you that Fiona is now aged 17 years. The second document that Diana shows you is an application by Eddie for variation of the maintenance payable to Diana; and the third document is another application by Eddie – to remit all 'arrears'. Diana tells you that she is very frightened of Eddie and that she hasn't 'gone to court' previously about the arrears because she is frightened that he will seek her out and beat her up. She tells you that Eddie is in prison (serving a sentence of 4 month's imprisonment, and due to be released in 2 months) and that he has not paid her *"a penny ever"* under the order, even though it was a consent order. Diana is working part-time and receives some top-up benefits. She has no other children and is not living with anyone else. She tells you that Fiona has a debilitating physical illness which means she needs a special wheelchair which Diana has been unable to afford. Diana also tells you that Fiona has never seen her father since he visited her in hospital when she was born.

Diana asks you for advice as to what her options are – please advise her and set out the relevant legislation that applies.

(8 marks)

- (2) You act for Gary who has been served (yesterday afternoon) with an ex parte injunction under S15 Domestic Proceedings and Magistrate's Court (Guernsey), Law 1988. The injunction/Court Order states that he must not approach his wife, Harriet or his two children, Ivo and Janice. Further, he is not allowed to return to the family home where until yesterday he lived with Harriet, Ivo and Janice but which he had to leave when he received the injunction. Attached to the injunction is a statement wherein Harriet has alleged that Gary is very controlling and that he has been violent to her on at least 10 occasions in the last 12 months, including last Sunday when he got drunk and threatened her with a knife. Gary says *'it is all a lie'* and wants to know what he can do about it. The injunction expires in three years' time. Advise Gary including:-
- (a) What does ex parte mean and in the circumstances as described above do you advise her and set out the relevant legislation that applies.

- (b) In granting the ex parte application, has the Court made any findings which are detrimental to Gary's contention that '*it is all a lie*'?
- (c) Gary wants to return to the family home to remove his belongings – what arrangements can he make to do so?
- (d) Gary tells you that every week he takes Ivo and Janice to see a local football team – and they will miss him if he cannot do so this weekend. What advice do you give?
- (e) Gary tells you that last night he went to the family home and that he removed some of his belongings from the garage which was attached to the house. He tells you that no one saw him because he was very quiet and he went 'in the dead of night' but he had to get his work clothes or else he could not go to work. What advice do you give? And does your advice alter if he tells you that he also went into the family kitchen, his son Ivo was there and he made Ivo promise he would not tell Diana that he had seen him? Consider whether there are any ethical issues in your instructions on this matter.

(10 marks)

- (3) You are asked to draft one section of a new codified Family Law for Guernsey. Draft the section you would want the new law to contain and also state briefly why you wish that section to be included. Please note the section that you draft can include an amended section of current legislation but it cannot repeat the same verbatim and that further, for the avoidance of doubt, it is not expected that your draft section will deal with an administrative matter but that it will be refer to a substantive matter.

(7 marks)

QUESTION 3

(total marks – 25)

Ken and Lily have separated after a short marriage. There are no children. Ken is a successful venture capitalist; Lily a CEO of M Ltd, a technology company set up and incorporated by her. The liquid assets come to £6 million, including the former matrimonial home in the Vale and a country home in Normandy. Settlement discussions took place and proceedings were compromised via a Consent Order, signed-up by the judge. It provided, in summary, a lump sum to Lily, a division of the property on a clean-break basis and, most relevantly, Ken to transfer his 10% shareholding in M Ltd to Lily.

Ken valued his shareholding in total at £300,000, on the basis of the value obtained a month earlier by another investor, who sold his shares in M Ltd.

Around a month after the signing of the Consent Order a newspaper article appeared referring to an investment of £35 million in M Ltd by an Asset Management company. It turned out that the basis of this investment was a valuation of £50 per share, Ken's valuation having been £10 per share.

Ken issued an application to set-aside the Consent Order. His principal ground was that had he known of the fact that a blue chip investor was prepared to back the company to that extent he would never have agreed to part with his shares as he did. Lily contends that Ken would have been well aware as a shareholder, that M Ltd, led and run by her, would actively seek out investment and she had complied with her duty of disclosure.

- (1) Summarise, with reference to any relevant decided cases, what the applicable legal principles are likely to be in this type of application.

(10 marks)

- (2) What is likely, in your opinion, to be the result of the present case?

(10 marks)

- (3) If there had not been a Consent Order and as part of his decision the Judge had awarded the entirety of the property in Normandy to Lily, and Ken had refused to participate in the administrative requirements to effect the transfer, what if anything can Lily do about that? Further, would your answer be any different if it was the property in the Vale that Ken had refused to participate in effecting the transfer of?

(5 marks)

QUESTION 4

(total marks – 20)

- (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.” (Financial Remedies Handbook, Bird and King, 10th Edition). Discuss.

(12 marks)

- (2) During the course of the Matrimonial Proceedings, Nick, the husband acts as follows:

- (a) He knowingly misrepresents his true financial position by omitting assets from his disclosure to the tune of £50,000;
- (b) He continues large-scale betting on football matches, and whilst backing Manchester United, loses another £150,000 from his bank account, leaving a balance of £50,000;
- (c) He shifts his ground twice on the issue of his earnings capacity and receives an adverse finding by the judge on the facts; and
- (d) He fails to agree simple facts and the hearing, the judge finds, takes two weeks instead of 3 days.

How is the Court likely to reflect this conduct by Nick? By way of background it is not a “big-money” case, but both Nick, and your client, his wife Olive, are well-off. The children of the family are now grown-up.

(8 marks)