

# **GUERNSEY BAR EXAMINATION**

**09:30AM 19 MAY 2023**

**PAPER FOUR**

**FAMILY LAW**

**THREE HOURS**

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

- **QUESTION 1 – 20 MARKS**
- **QUESTION 2 – 20 MARKS**
- **QUESTION 3 – 20 MARKS**
- **QUESTION 4 – 20 MARKS**
- **QUESTION 5 – 20 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

Amy, Boris and Candy have complex marriages. They are all unhappy and keen to escape their relationships. At this stage, they do not want advice on financial matters and none of them has children.

Amy had been married to Dave for five years. During an argument, Dave admitted that he has been married before and did not bother to obtain a divorce from his last wife. She lives abroad and he did not think it was important. Stunned, Amy sought comfort from her family and met up with her birth father who had been absent from her life for many years. He was horrified to learn of her marriage and told her that he had an affair with Dave's mother and that Dave may in fact be her half sibling.

Boris has been married to Emma for three months. Unfortunately, Boris has not been able to consummate the marriage as he suffers from impotency. Boris has suffered from depression for many years and avoids confrontation. He would not have gone through with the marriage, but Emma threatened to kill him if he called off the engagement. On the day of the wedding, Emma confessed that she had lied to him about her finances and that she was not, in fact, the heiress to a famous motor racing dynasty. She has asked Boris to pay her debts.

Candy has been married to Fred for a year. A week after the wedding Fred told Candy that he had been having an affair with her sister Margaret. They decided to stay together. Yesterday, Fred admitted that the affair is still on going, that he was in love with Margaret and that he wanted to marry her. On learning the news, Candy flew at Fred with a rolled up newspaper and hit him around the head, causing bruising. Fred has moved into the spare room. He has told Candy he will never agree to a divorce.

- a. Advise Amy, Boris and Candy, on the status of their marriages, the remedies available to them and the procedure that will apply - **15 marks**
- b. How, if at all, would your advice differ if the Matrimonial Causes Law, 2022 were in force? **5 marks**

## Question Two

Geoff (aged 50) and Vicky (aged 45) had been married for twenty years; they separated three years ago and have recently obtained a divorce. Geoff and Vicky now wish to resolve financial matters.

There are three children of the marriage aged 19, 12 and 6. The younger children are in fee-paying schools, the eldest is at university. The children divide their time equally between their parents. Geoff is the managing director of a finance company, earning £250,000 net per annum. Geoff has been told that he will receive a £50,000 bonus within the next few months. Vicky has not worked since passing her LPC exams 20 years ago and until the separation was the main carer of the children. The former matrimonial home has been valued at £2million and is mortgage free. Vicky currently lives there. The property was purchased in 2010 using an inheritance that Vicky received that year from her father. Geoff has a pension, which has a cash equivalent transfer value of £1 million. Vicky has no pension provision. Geoff told Vicky when she received the inheritance from her father that he wanted to keep their finances separate, and they have never had a joint account. They considered a nuptial agreement, but Geoff did not want to waste the money on lawyers. Geoff now has savings of £4 million, whereas Vicky has no savings – Geoff transfers funds to her each month for housekeeping. Geoff has stated that Vicky should now qualify as a Guernsey Advocate and take care of herself, as the children live with both of them, he does not expect to pay any maintenance for Vicky or the children. Vicky's mother is 70 and in good health. When she dies, Vicky expects to receive a significant inheritance.

- a. Advise Geoff as to what would be an appropriate settlement, and why - **15 marks**
- b. Advise Geoff as to what practical and procedural steps can be taken to move things on - **5 marks**

### Question Three

Bob and Claire are not married. They have two children Joey (aged eleven) and Grace (aged one). Bob is not named on the children's birth certificates. Bob and Claire have never lived together, and their relationship has now broken down. The children live with Claire, but Bob would like them to live with him 50% of the time. Claire thinks that Bob is a bad influence and would prefer that he only sees the children when she is there, and never for longer than a couple of hours. She is thinking of taking the children to live in England, and Bob would not be happy with that. Joey is very close to his Dad and has expressed a wish to spend more time with him. Bob lives in a one bedroomed flat and has a number of convictions for drugs offences, the last of which was twelve years ago. Bob says that he is now drug free. He has a new girlfriend, of whom Claire does not approve. Grace was born with a congenital heart defect and has a developmental delay. Her doctors think it likely she may have a learning disability. Bob and Claire cannot agree which secondary school Joey should go to. Claire does not want Grace to have an operation recommended by her doctor, whereas Bob would like to follow medical advice. Claire is refusing to allow Grace to be vaccinated.

- a. Advise Bob as to what orders may be available to resolve these problems, and the principles that will apply - **10 marks**
- b. What procedure will be followed? - **3 marks**
- c. Assume that Bob has accepted your advice, and that your applications have been successful. Draft the order - **7 marks**

#### Question Four

Betty has two children Amy (aged six months) and Charlie (aged twelve). Betty has a problematic relationship with alcohol and has been known to services for many years. The children's father is Robert who is currently in prison following a serious assault on Betty nine months ago, during which he broke her cheek bone. He is not due to be released for two years and has been asking for contact with the children in prison. Two weeks ago, Charlie told his teacher that his mother is drunk all the time and that he is taking care of his baby sister. His schoolwork has gone downhill, and he is frequently attending school looking grubby and with an unpleasant smell. He comes to school with a packet of biscuits for lunch. On several occasions recently, the school have washed his uniform and provided him with alternative clothing. The Committee for Health and Social Care have started an investigation. Betty does not like social workers and has refused to allow them into the home to see Amy; she has told them they can see Charlie at school. Yesterday, Betty took Amy to the doctor, who noticed that Amy was quite dirty and appeared to have some small bruises on her right thigh underneath her nappy. Betty told the doctor that it was none of his business and that Amy is just an active baby. This afternoon Betty turned up at Charlie's school to collect him. She had Amy with her in a pram. The teacher thinks that she is drunk and has called the police.

- (a) Faced with this situation, what powers do the police have under the Children (Guernsey and Alderney) Law, 2008? – **2 marks**
- (b) Regardless of what steps the police may take, advise Betty as to the application(s) that the Committee for Health and Social Care could bring in these circumstances, which application(s) you would consider to be the most appropriate; and the principles that will apply - **12 marks**
- (c) Would Robert be able to make an application for contact whilst proceedings are ongoing, and if so under what statutory provision? – **2 marks**
- (d) Assume that the Committee does decide to make the application(s) that you felt to be the most likely. Provide Betty with a summary as to the procedure that will be followed – **4 marks**

## Question Five

### Part A

Harry and Sally have been married for fifteen years and have two children Alexander (aged 10) and Jemima (aged 7). A year ago, Harry and Sally separated. Initially their relationship was amicable, and they managed to agree arrangements for the children. Harry saw them often. No concerns were raised by either parent, and the children were thriving. Two months ago, Harry told Sally that he had met someone new and planned to introduce her to the children shortly. The following day, Sally told Harry that the children no longer wish to see him, and he has not been able to make contact with them since. Harry has reacted by stopping child maintenance payments.

Advise Harry as to what steps he should take (i) to try to reinstate his contact with the children and (ii) in respect of child maintenance payments. Explain the legal principles that will apply – **10 marks**

### Part B

You have issued an application for Harry. The court has appointed an FPA. At the next hearing the FPA reports that they have met with the children who said that they did not want to see their father. Jemima told the FPA that Harry had spoken "inappropriately" to her about boys and touched her leg whilst doing so. She said specifically "Father violated my personal space, he makes me cringe and should not be around sweet young ladies like me". The FPA has also met with Sally, who repeated verbatim what the children had already said to the FPA. The school have noticed a change in both children's behaviour since the breakdown in their relationship with Harry. Alexander has told his teacher that he misses his Dad. Jemima has begun to repeat to teachers, and to other children, the disclosure made to the FPAS officer using the same language each time. The police have investigated Jemima's claims, but Jemima told them that nothing had happened and that her Daddy taught her to tell the truth to the police. The FPA is concerned about the situation, and feels the children are possibly being influenced by Sally.

What submissions do you make to the court: (i) as to the approach the court should take when considering the issue of interim contact between Harry and the children and (ii) as to what case management orders may be appropriate to ensure that the court can get to the bottom of this tricky case – **10 marks**