

**GUERNSEY BAR EXAMINATION**

**9.30AM, 13 MAY 2021**

**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 1 (total 25 marks)

Anne and Ben have been married for 6 months. They do not have children. Anne and Ben had sex on their wedding night, but the following morning Anne told Ben that she would never be able to sleep with him again and found him repellent. Anne had discovered that Ben slept with their bridesmaid the night before the wedding, and she only went through with the marriage because her parents said it would humiliate them if she did not. Anne and Ben decided to separate immediately. Ben was born in England and has only lived in Guernsey for the last nine months. He is now living alone in the flat he rented with Anne. Anne was born in Guernsey; after the separation, she went travelling for two months but she then returned to the Island and moved back in with her parents.

Anne and Ben did go out for dinner a couple of weeks ago and discussed a reconciliation. They had a kiss and cuddle. The evening ended abruptly when Anne admitted that she has developed a close friendship with her boss, Charles, and that she had feelings for him. Ben has not taken it well. He has been following Anne, loitering outside her parents' home and her place of work. He has sent Anne numerous offensive text messages, and his last message read, "*if I can't have you, nor can he. I will kill you both*". Anne does not think that Ben will actually hurt her, but the stress is making her unwell and she wants Ben to leave her and her parents alone. Bizarrely, she wants to serve any proceedings on Ben herself to save money - and because she thinks he may hide away to avoid them.

Answer the following questions, explaining your answers and giving authority wherever possible:

1.1 Which court has jurisdiction to make orders in relation to the marriage?

**[3 marks]**

1.2 What proceedings, if any, can Anne bring to draw a line under the marriage?

**[10 marks]**

1.3 If you are instructed to issue proceedings to end the marriage, what procedure will you need to follow?

**[6 marks]**

1.4 What orders, if any, can Anne obtain to stop Ben's behaviour? Outline the procedure that you will need to follow.

**[6 marks]**

## QUESTION 2 (total 25 marks)

Darren (40) and Eloise (41) have been married for ten years and have two children: Fred (9) and Gemma (2). They separated 18 months ago and have obtained a divorce decree. Eloise is an Advocate earning £150,000 per annum and she will receive a bonus of £50,000 this year. Darren was earning about the same but stopped work as an investment adviser shortly after Gemma was born, because he was about to be sacked for misconduct. Darren received a final salary payment of £50,000, which he lost almost immediately on risky investments. Gemma is now at nursery in the mornings and Darren has started a part-time job as a fitness coach, earning £12,000 per annum. They have agreed that the children will spend time with both parents, but Eloise works long hours and Darren will continue to provide the bulk of the care for the children, at least for now. When Gemma goes to school, Darren plans to start his own fitness business, and expects to earn about £50,000 per annum. He does not want to return to his old job because he did not enjoy it.

Darren lives in the jointly owned family home, which is worth £1 million, and is subject to a £300,000 mortgage, which Eloise is currently paying. Eloise is renting but wishes to buy. When they purchased the family home, they put down a deposit of £250,000, which was a wedding gift from Eloise's parents. Eloise's mother passed away two months ago and Eloise will inherit approximately £500,000 from her estate. Two years ago, the couple bought a small second property that they own in equal shares with Ben's parents, who live there. There is no mortgage on that property, which is worth about £300,000.

Advise Darren on the following points, explaining your answers and giving authority wherever possible:

- 2.1 What principles will the court apply when deciding ancillary matters, and what order(s) would the court be likely to make in this case? **[20 marks]**
- 2.2 Eloise has written to you, suggesting mediation. Explain to Darren what mediation is and the difference between mediation and FDR. **[3 marks]**
- 2.3 Darren tells you that Eloise will do anything to avoid embarrassment. He says that she fiddles her time records at work, and instructs you to say you will report her to the Bailiff if she does not give him what he wants. **[2 marks]**

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

Floss and Peter have never been married. They have one child Joseph (5). Peter is not named on Joseph's birth certificate. Floss has struggled with alcohol dependency for many years and her mental health is poor. There are days when she struggles to get out of bed. Peter has not been a consistent feature in Joseph's life and he now lives with his new wife and baby. He has not seen Joseph for about a year because Floss would not permit it. Floss' mum Helen has always been supportive of the family. Two months ago, Floss dropped Joseph at Helen's house and left him there. Helen has cared for Joseph ever since. Joseph was failing to meet his milestones but he is now doing better.

Floss wants to take Joseph back into her care. Helen feels that Joseph should stay with her. Floss has fallen out with her GP who threatened to report her to the children's service for neglecting Joseph; she intends to move Joseph to a different GP who is less 'difficult'. Helen and Peter disagree with that decision but Floss intends to do it anyway. The GP has advised that Joseph needs an assessment of his hearing; Floss will not give her consent.

Peter wants to re-establish his contact with Joseph and would like to see him regularly. Floss does not think Peter should be allowed to see Joseph, because he left her for another woman. Helen does not know Peter very well but has nothing against him and thinks Joseph should get to know his father.

Answer the following questions, explaining your answers and giving authority wherever possible:

- 3.1 Advise Floss as to whether she needs to bring an application at this stage.  
**[2 marks]**
- 3.2 Advise Peter and Helen as to what applications they can each bring, the principles that will apply and their chances of success.  
**[15 marks]**
- 3.3. Now that you have worked out the correct outcome for this family, draft the order.  
**[8 marks]**

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

Mark (6) has been very withdrawn at school recently. One day, his teacher notices that he has a bruise on the inside of his arm that looks like a thumbprint. Mark says that he fell off a chair. The next day, Mark is taken to hospital by ambulance in the early evening. He has suffered a serious head injury whilst in the care of his parents Mork and Mindy.

Mork and Mindy have been known to the children's service for some time. Mork has a number of convictions relating to drugs and the police have been called to the home on 6 occasions following reports of screaming and shouting. The doctor who has examined Mark feels that his injury is suspicious and may be non-accidental. Mindy and Mork deny any knowledge of how Mark was injured but they gave different accounts to the paramedics and the staff at the hospital. The police are investigating.

A neighbour has come forward and says that Mork admitted to his mates in the pub that he had hit Mark with a rolling pin. Mark will be in hospital for around two weeks and will then be fit for discharge. You are appointed to represent Mindy. A social worker approached her yesterday and asked whether she would agree to Mark being placed with a foster carer while the police and social services are looking into Mark's accident. The social worker has asked questions about Mork that Mindy does not want to answer.

Advise Mindy on the following points, explaining your answers and giving authority wherever possible:

- 4.1 Should Mindy agree to put Mark into foster care? **[3 marks]**
- 4.2 What orders are the Committee likely to apply for:
  - 4.2.1 In the short term if Mark is not in voluntary care;
  - 4.2.2 Generally, if they have reason to believe that Mark's injuries were non-accidental? **[5 marks]**
- 4.3 Which court or tribunal will hear the application(s) and how will it reach a decision? What principles will apply? **[15 marks]**
- 4.4 Mindy tells you that she loves Mork and does not want to 'grass him up'. She tells you that Mork did hit Mark, and she agreed to cover it up because he did not mean to do it. She tells you not to say anything to anyone. **[2 marks]**

**END OF PAPER**