

Contents

Table of Statutes

Table of Secondary Legislation

Table of Cases

Chapter 1: Introductory Matters

- 1.1 Introduction
- 1.2 The key legislation
 - 1.2.1 Marriage and civil partnership
 - 1.2.2 Domestic abuse
 - 1.2.3 Children
 - 1.2.4 The family home
- 1.3 Terminology
- 1.4 Human rights and family law
 - 1.4.1 Interpretation of legislation
 - 1.4.2 Duties of public authorities
 - 1.4.3 Declarations of incompatibility
 - 1.4.4 The most relevant Articles of ECHR

Chapter 2: The Formation of Adult Partnerships

- 2.1 Introduction
- 2.2 Marriage
 - 2.2.1 Definition of marriage
 - 2.2.2 Domicile
 - 2.2.3 Capacity to marry
 - 2.2.3.1 Gender Recognition Act 2004
 - 2.2.3.2 Bigamy
 - 2.2.3.3 The prohibited degrees of relationship
 - 2.2.4 Formalities of marriage
 - 2.2.4.1 Before the marriage
 - 2.2.4.2 The marriage ceremony
 - 2.2.5 Recognition of foreign marriages
 - 2.2.5.1 Polygamous marriages
- 2.3 Civil partnerships
 - 2.3.1 Capacity to form a civil partnership
 - 2.3.2 Formalities of civil partnership
 - 2.3.3 The effect of the Human Rights Act 1998
- 2.4 Cohabitation
 - 2.4.1 Cohabitation contracts
 - 2.4.2 Pressure for reform
- 2.5 Marriage, civil partnership and cohabitation compared
- 2.6 Summary

Chapter 3: Void and Voidable Marriages

- 3.1 Introduction
- 3.2 Historical context
- 3.3 Differences between void and voidable marriages
- 3.4 Void marriages
 - 3.4.1 Grounds on which a marriage is void
 - 3.4.2 Effects of a marriage being void
- 3.5 Voidable marriages
 - 3.5.1 Grounds on which a marriage is voidable
 - 3.5.1.1 Non-consummation

| | |
|---------|---|
| 3.5.1.2 | Lack of consent |
| 3.5.1.3 | Mental disorder |
| 3.5.2 | Bars to an application |
| 3.5.2.1 | Applicant's conduct |
| 3.5.2.2 | Delay |
| 3.5.2.3 | Applicant's knowledge |
| 3.5.3 | Effects of a decree annulling a voidable marriage |
| 3.6 | Presumption of death |
| 3.7 | Marriages with a foreign element |
| 3.7.1 | Jurisdiction |
| 3.7.1.1 | Jurisdiction under Brussels II revised |
| 3.7.1.2 | The definition of habitual residence |
| 3.7.1.3 | What if proceedings are issued in more than one Member State? |
| 3.7.1.4 | What if no Member State has jurisdiction under Brussels II revised? |
| 3.7.2 | Which law governs the validity of the marriage? |
| 3.7.3 | When will a foreign decree of nullity be recognised? |
| 3.8 | Summary |

Chapter 4: Divorce, Dissolution and Judicial Separation

| | |
|--------|--|
| 4.1 | Introduction |
| 4.2 | Irretrievable breakdown |
| 4.2.1 | Conciliation and mediation in divorce |
| 4.2.2 | Compulsory mediation |
| 4.3 | Adultery and intolerability |
| 4.3.1 | What is adultery? |
| 4.3.2 | Intolerability |
| 4.3.3 | Living together after adultery |
| 4.4 | The respondent's behaviour |
| 4.4.1 | What is behaviour? |
| 4.4.2 | Reasonable expectation |
| 4.4.3 | Living together after behaviour |
| 4.5 | Desertion |
| 4.5.1 | What is desertion? |
| 4.5.2 | Continuous period of at least two years |
| 4.6 | Two years' separation with consent |
| 4.6.1 | Living apart |
| 4.7 | Five years' separation |
| 4.7.1 | Defence of grave hardship |
| 4.8 | Matters affecting decree absolute |
| 4.8.1 | Financial position after divorce |
| 4.8.2 | The children's interests |
| 4.9 | Divorce and dissolution of religious marriages |
| 4.10 | When will a foreign divorce be recognised? |
| 4.11 | Dissolution of civil partnerships |
| 4.12 | Judicial separation |
| 4.12.1 | Grounds for a decree |
| 4.12.2 | How judicial separation differs from divorce |
| 4.12.3 | Refusal to grant a decree |
| 4.12.4 | Effect of decree |
| 4.13 | Summary |

Chapter 5: The Consequences of Marriage and Civil Partnership

- 5.1 Introduction
- 5.2 The status of marriage
- 5.3 Effect of the Married Women's Property Act 1882
- 5.4 Resolving disputes about who owns what
- 5.5 Cash
 - 5.5.1 The common fund
 - 5.5.2 Housekeeping allowances
- 5.6 Gifts
 - 5.6.1 Wedding presents
 - 5.6.2 Gifts between spouses
 - 5.6.3 Gifts between engaged couples
- 5.7 Maintenance agreements
 - 5.7.1 Separation agreements
 - 5.7.2 Maintenance agreements
 - 5.7.3 Variation of maintenance agreements
- 5.8 Financial orders in the Family Proceedings Court
 - 5.8.1 The grounds for an order
 - 5.8.1.1 The respondent has not provided reasonable maintenance for the applicant
 - 5.8.1.2 The respondent has not provided or made a proper contribution to reasonable maintenance for any child of the family
 - 5.8.1.3 The respondent has behaved in such a way that the applicant cannot reasonably be expected to live with him
 - 5.8.1.4 The respondent has deserted the applicant
 - 5.8.2 The orders available
 - 5.8.2.1 Periodical payments orders
 - 5.8.2.2 Lump sum orders
 - 5.8.3 The factors to be applied
 - 5.8.4 Agreed orders
 - 5.8.5 Voluntary separation orders
 - 5.8.6 Duration of orders
- 5.9 Financial orders in the High Court and County Court
- 5.10 Welfare benefits
 - 5.10.1 Child benefit
 - 5.10.2 Income support
 - 5.10.3 Housing benefit and council tax benefit
 - 5.10.4 Working tax credit
 - 5.10.5 Child tax credit
- 5.11 Summary

Chapter 6: The Family Home

- 6.1 Introduction
- 6.2 Legal and beneficial interests
- 6.3 Implied trusts
 - 6.3.1 Resulting trusts
 - 6.3.2.1 Constructive trusts where there was an agreement to share
 - 6.3.2.2 Constructive trusts where there was no express agreement to share
 - 6.3.3 Which kind of implied trust?
 - 6.3.4 Establishing the size of the beneficial interest
 - 6.3.5 Summary of implied trusts

| | |
|---------|---|
| 6.4 | Will the house be sold? |
| 6.4.1 | What applications can be made? |
| 6.5 | Who can live at the family home? |
| 6.5.1 | Home rights |
| 6.5.1.1 | What are home rights? |
| 6.5.1.2 | When will home rights end? |
| 6.5.1.3 | Registration of home rights |
| 6.6 | The impact of the Human Rights Act 1998 |
| 6.7 | Summary |

Chapter 7: Financial Orders on Divorce and Dissolution

| | |
|---------|--|
| 7.1 | Introduction |
| 7.2 | Orders for spouses and civil partners |
| 7.2.1 | Maintenance pending suit |
| 7.2.2 | Periodical payments orders |
| 7.2.2.1 | Secured periodical payments |
| 7.2.2.2 | Duration of a periodical payments order |
| 7.2.3 | Lump sum orders |
| 7.2.4 | Property adjustment orders |
| 7.2.4.1 | Transfer of property |
| 7.2.4.2 | Settlement of property |
| 7.2.4.3 | Variation of settlement |
| 7.2.5 | Orders for sale |
| 7.2.6 | Pension orders |
| 7.2.6.1 | Pension sharing orders |
| 7.2.6.2 | Pension attachment orders |
| 7.2.6.3 | Valuing the pension |
| 7.3 | What should the court consider when making financial orders? |
| 7.3.1 | The welfare of the children |
| 7.3.2 | Pre-marriage contracts |
| 7.3.3 | The s25 factors |
| 7.3.3.1 | Financial resources |
| 7.3.3.2 | Needs |
| 7.3.3.3 | Standard of living |
| 7.3.3.4 | Age and duration |
| 7.3.3.5 | Disability |
| 7.3.3.6 | Contributions |
| 7.3.3.7 | Conduct |
| 7.3.3.8 | Benefits lost |
| 7.3.4 | The clean break |
| 7.4 | The approach of the courts |
| 7.4.1 | White v White [2000] |
| 7.4.2 | Miller v Miller; McFarlane v McFarlane [2006] |
| 7.4.3 | Charman v Charman [2007] |
| 7.4.4 | Compensation |
| 7.4.5 | Financial orders in the future |
| 7.5 | Financial provision for children |
| 7.5.1 | Child maintenance |
| 7.5.1.1 | The Child Support Agency |
| 7.5.1.2 | Periodical payments orders by the court |
| 7.5.2 | Lump sum orders |
| 7.5.3 | Property adjustment orders |
| 7.5.4 | Matters affecting financial orders for children |
| 7.5.5 | Orders against a non-parent |

| | |
|-------|---|
| 7.5.6 | Duration of orders for children |
| 7.6 | Variation and discharge of orders |
| 7.6.1 | Periodical payments orders |
| 7.6.2 | Matters affecting applications for variation or discharge |
| 7.7 | The impact of the Human Rights Act 1998 |
| 7.8 | Summary |

Chapter 8: Protection from Domestic Abuse

| | |
|--------|---|
| 8.1 | Introduction |
| 8.2 | Definitions |
| 8.2.1 | Cohabitants |
| 8.2.2 | Relevant child |
| 8.2.3 | Associated persons |
| 8.3 | Occupation orders |
| 8.3.1 | The applicant is entitled to occupy the home |
| 8.3.2 | Powers of the court |
| 8.3.3 | Factors the court will take into account |
| 8.3.4 | The “balance of harm” test |
| 8.3.5 | Duration of orders |
| 8.4 | The applicant is a former spouse/civil partner and only the respondent is entitled to occupy the home |
| 8.4.1 | Powers of the court |
| 8.4.2 | Factors the court will take into account |
| 8.4.3 | Duration of orders |
| 8.5 | The applicant is a cohabitant or former cohabitant and only the respondent is entitled to occupy the home |
| 8.6 | Neither party is entitled to occupy the home |
| 8.7 | Additional powers |
| 8.8 | Impact of the Human Rights Act 1998 |
| 8.9 | Non-molestation orders |
| 8.9.1 | What is molestation? |
| 8.9.2 | What will the court take into account? |
| 8.9.3 | The nature of the order |
| 8.9.4 | Enforcement of the order |
| 8.10 | Without notice orders |
| 8.11 | Undertakings |
| 8.11.1 | Non-molestation orders |
| 8.11.2 | Occupation orders |
| 8.12 | Enforcement of occupation orders |
| 8.12.1 | When will a power of arrest be attached to an occupation order? |
| 8.12.2 | What happens if no power of arrest is attached? |
| 8.12.3 | What happens if the respondent is arrested? |
| 8.12.4 | How will the respondent be punished if he is found guilty? |
| 8.13 | Protection from Harassment Act 1997 |
| 8.13.1 | What is harassment? |
| 8.13.2 | Civil remedies |
| 8.13.3 | Criminal offences |
| 8.14 | Summary |

Chapter 9: Children and Parents

- 9.1 Introduction
- 9.2 Who is a parent?
 - 9.2.1 Relevance of legitimacy
 - 9.2.2 Children of married parents
 - 9.2.3 Assisted reproduction
 - 9.2.3.1 Who is the mother?
 - 9.2.3.2 Who is the other parent?
- 9.3 Proving parentage
 - 9.3.1 Scientific tests
 - 9.3.2 Judicial declaration
 - 9.3.3 Entry on the register
- 9.4 Parental responsibility
 - 9.4.1 Married/civil partnered parents
 - 9.4.2 Unmarried parents
 - 9.4.3 Step-parents
 - 9.4.4 People with residence orders
 - 9.4.5 Guardians
 - 9.4.6 How is parental responsibility exercised?
- 9.5 Summary

Chapter 10: Resolving Disputes about Children

- 10.1 Introduction
- 10.2 s8 orders
 - 10.2.1 Residence orders
 - 10.2.1.1 Shared residence orders
 - 10.2.2 Contact orders
 - 10.2.2.1 Contact and domestic violence
 - 10.2.2.2 Uncooperative parents
 - 10.2.3 Without notice orders
 - 10.2.4 Specific issue and prohibited steps orders
 - 10.2.5 Changing the child's name
 - 10.2.6 Removing the child from the UK
 - 10.2.6.1 Permanent removal from the UK
 - 10.2.6.2 Relocation within the UK
 - 10.2.7 Availability of s8 orders
 - 10.2.8 Who can apply?
 - 10.2.9 Bar on repeat applications
 - 10.2.10 Duration of orders
- 10.3 Family assistance orders and s37 directions
- 10.4 General principles of the Children Act 1989
 - 10.4.1 The welfare principle
 - 10.4.2 The no order principle
 - 10.4.3 The no delay principle
- 10.5 The welfare checklist
 - 10.5.1 The wishes and feelings of the child
 - 10.5.2 Physical, emotional and educational needs
 - 10.5.3 Likely effect of a change in circumstances
 - 10.5.4 Age, sex, background and any relevant characteristics
 - 10.5.5 Any harm the child has suffered or is at risk of suffering
 - 10.5.6 The capability of the parents and anyone else relevant
 - 10.5.7 The range of powers available to the court
- 10.6 Financial orders for children
 - 10.6.1 Who can apply?

| | |
|--------|---------------------------------------|
| 10.6.2 | Range of orders |
| 10.6.3 | Duration of orders |
| 10.6.4 | What factors will the court consider? |
| 10.7 | Summary |

Answers to Self-assessment Questions

Index

© 2011 Copyright ILEX Tutorial College Limited

All materials included in this ITC publication are copyright protected.

All rights reserved.

Any unauthorised reproduction or transmission of any part of this publication, whether electronically or otherwise, will constitute an infringement of copyright. No part of this publication may be lent, resold or hired out for any purpose without the prior written permission of ILEX Tutorial College Ltd.

WARNING: Any person carrying out an unauthorised act in relation to this copyright work may be liable to both criminal prosecution and a civil claim for damages.

This publication is intended only for the purpose of private study. Its contents were believed to be correct at the time of publication or any date stated in any preface, whichever is the earlier.

This publication does not constitute any form of legal advice to any person or organisation.

ILEX Tutorial College Ltd will not be liable for any loss or damage of any description caused by the reliance of any person on any part of the contents of this publication.

Published in 2011 by:
ILEX Tutorial College Ltd
College House
Manor Drive
Kempston
Bedford
United Kingdom
MK42 7AB

British Library Cataloguing in Publication Data

A catalogue record for this manual is available from the British Library.
ISBN 978-1-84256-558-2