

**Chapter 2:** The Formation and Recognition of Adult Relationships: Marriage, Civil Partnerships and Cohabitation

**Question One**

Amy had a short relationship with Bradley when she was 18 years old. She fell pregnant and gave birth to a daughter, Chloe in 1995, when she was 19 years of age. The following year Amy met and married David, who was also 20 years old. The marriage was disastrous and they split up after 6 weeks. One year later Amy and David were divorced and did not see each other again. Amy married Eric in 2000. Chloe has never seen her natural father and has always referred to Eric as 'Dad'. In 2015 Chloe started to work for a company which happened to be managed by David. They formed a relationship and Chloe introduced David to her parents. Amy was shocked to discover that Chloe's boyfriend was her ex-husband, David. Chloe and David want to get married.

Consider whether Chloe and David can marry one another.

**Answer Guidance**

This problem question focuses on English and Welsh law relating to capacity to marry and the right to marry contained in article 12 of the European Convention on Human Rights. Candidates must explain the prohibited degrees of relationship contained in the Marriage Act 1949 (as amended), in particular, the law relating to affinity, which is detailed in Schedule One. Students should discuss *B and L v United Kingdom* (Application No. 36 536/02) [2006] 1 FLR 35, where the prohibition against marrying one's in-laws was successfully challenged in the European Court of Human Rights and should consider whether it will be possible to challenge the restrictions on marrying step-relations. To do this, candidates will have to explore the rationale behind the restrictions on marrying step-relations and compare them with the rationale behind the restrictions on marrying one's in-laws. The answer to this question should include an explanation of the consequences of marrying in violation of the Marriage Act 1949, as indicated in the Matrimonial Causes Act 1973. It should also make reference to the use of private Acts of Parliament to circumvent the restrictions contained in the Marriage Act and should discuss the advantages and disadvantages of this process.

### **Question Two**

Fatima is 20 years old. When her parents discovered that she had formed a relationship with a young man that she met at college they were extremely angry and threatened to disown her if she did not end the relationship. They then told Fatima that they had arranged for her to marry her cousin in India. Fatima told her parents that she did not want to, but again, they threatened to disown her if she did not do as she was told. Fatima has found travel documents indicating that her parents are planning to take her to India in three months' time.

Explain the action that can be taken to prevent the marriage from taking place and whether criminal liability may be incurred by Fatima's parents.

### **Answer Guidance**

This question requires candidates to apply the civil and criminal law relating to forced marriage to a problem scenario. Students should begin by providing a definition of forced marriage and should then explain the civil action that can be taken to prevent the marriage from taking place. The inherent jurisdiction of the High Court and the use of non-molestation orders can be briefly mentioned, but the answer should focus on Forced Marriage Protection Orders (FMPOs), which are available under Part 4A of the Family Law Act 1996, which was inserted by the Forced Marriage (Civil Protection) Act 2007. The advantages and disadvantages of FMPOs should be discussed and reference should be made to case law, such as *A v SM & anor* [2012] EWHC 435. The possibility of criminal liability should then be considered. Students may explain that several non-specific offences may be committed in connection with forced marriage e.g. kidnap, assault etc. but attention must be paid to the Anti-social Behaviour, Crime and Policing Act 2014, which made forcing someone to marry a specific criminal offence. The advantages and disadvantages of this should be discussed. The question does not require candidates to explore the law of nullity, which is available to those who have actually been forced to marry, but it can be mentioned briefly, as prevention may be unsuccessful.

### **Question Three**

Compare the rights and responsibilities of cohabitants with the rights and responsibilities of spouses and civil partners and consider whether the law needs to be reformed.

### **Answer Guidance**

This essay question invites students to compare the rights and responsibilities of spouses and civil partners (which are almost identical) with those pertaining to cohabitants. It is useful to begin the answer with statistics, as the increasing number of cohabiting couples helps to demonstrate why this issue is important. The answer should then compare the rights and responsibilities of spouses/civil partners and cohabitants in relation to: financial relief on separation; claiming an interest in the family home; child support; inheritance; parental responsibility; protection from domestic violence etc. It is not possible to discuss the law relating to these areas in depth, but there should be reference to key cases such as *McFarlane v McFarlane* [2006] UKHL 24 and *Burns v Burns* [1984] Ch 317 in relation to finance on separation. Care needs to be taken to ensure that the answer is not descriptive. It is essential to assess whether the law should be reformed i.e. whether cohabitants should be granted additional rights and the recommendations of the Law Commission (2007) and the provisions of the Cohabitation Rights Bill 2014-15 should be included in your answer. You should consider whether protecting vulnerable people is more important than respecting individual autonomy. There is no right answer to the second part of the question.

#### **Question Four**

Consider whether there is a need to retain civil partnerships now that same sex couples can marry and if so, whether the law relating to civil partnerships should change.

#### **Answer Guidance**

The Civil Partnership Act 2004 was enacted to enable same sex couples to formalise their relationship via a statutory procedure and provided civil partners with almost identical rights and responsibilities as those pertaining to married couples. Since the Marriage (Same Sex Couples) Act 2013 permitted same sex couples to marry, it is debateable whether we need to retain civil partnerships, given that they were a stepping-stone towards the introduction of same sex marriage. In order to answer this essay question it is essential to compare marriage and civil partnerships in terms of formation, rights and responsibilities and annulment and dissolution. This comparison will reveal whether civil partnerships are sufficiently distinctive to justify retaining them. Statistics relating to the formation of civil partnerships since the Marriage (Same Sex Couples) Act 2013 came into force and the conversion of civil partnerships into marriage will also be required to answer this question, as they will demonstrate whether there is an ongoing demand for civil partnerships. The consequences of abolishing civil partnerships should be discussed. The second part of the question is inviting students to consider whether civil partnerships should be changed e.g. should they be extended to opposite sex couples ? What would the advantages and disadvantages of this be ? In order to tackle both parts of this question reference should be made to the Consultation on the Future of Civil Partnerships in England and Wales 2014 and *Steinfeld and Keidan v Secretary of State for Education* [2017] EWCA Civ 81.