

## **Chapter 6: Financial Relief and Child Support**

### **Question One**

Vanessa and Walt met ten years ago and married one year later as Vanessa was pregnant. Walt is a successful television producer and Vanessa is an actress, although she has not worked since she became pregnant. When they married, Vanessa moved out of her apartment worth £300,000 and moved into Walt's house, which is worth £2 million. Prior to the marriage, Vanessa and Walt signed an agreement, which states that in the event of divorce each party leaves the relationship with the assets that he or she brought to it. The agreement prevents either party from making a claim for maintenance or property from the other. Since the couple married, Walt has produced an award-winning documentary and has signed two multi-million pound contracts to produce films. Last month, Vanessa and Walt separated and intend to divorce. Vanessa wants half of Walt's assets, as well as maintenance for herself and her son, Xio.

Advise Vanessa as to the legal position in this case.

N.B. It is not necessary to discuss the ground for divorce.

### **Answer Guidance**

This problem question focuses on financial relief on divorce and the validity of prenuptial agreements. Students should begin by pointing out that the courts have wide-ranging powers to make financial orders on divorce under the Matrimonial Causes Act 1973 and because it is not possible to deprive the courts of such powers by signing a pre-nuptial contract, the latter is not strictly binding. However, a pre-nuptial contract cannot be disregarded (s.25(1)). The leading case relating to pre-nuptial agreements, namely, *Radmacher v Radmacher (formerly Granatino)* [2010] UKSC 42 must be considered in depth. Post-*Radmacher* case law e.g. *Z v Z* [2011] EWHC 2878, the Law Commission Report on Marital Property Agreements (2011) and the Draft Nuptial Agreements Bill should also be included in the answer. Students should point out that Vanessa has the right to apply to the courts for financial relief, but the content of the pre-nuptial agreement will be taken into account. Students should be aware that Walt cannot contract out of his responsibility to maintain his child. It is therefore likely that an order will be made by the courts in relation to Xio: students should consider what type of order may be appropriate and the fact that an application made be made under the Child Support Act 1991 or Schedule 1 to the Children Act 1989.

## Question Two

Explain the factors that the courts take into account when hearing applications for financial relief on divorce and consider how the courts achieve fairness and equality.

### Answer Guidance

This essay question invites students to explain the factors that the court must take into account when hearing financial applications on divorce, which requires a discussion of s.25 of the Matrimonial Causes Act 1973. The court must have regard to all circumstances of the case (which can include the existence of a pre-nuptial agreement) and first consideration must be given to the welfare, while a minor, of any child of the family (s.25(1)). These issues should be discussed with reference to case law. The factors contained in s.25(2) e.g. income, needs, standard of living, age, contributions etc. should also be explained with reference to relevant cases. In addition, the factors that must be taken into account if the court is making an award in relation to a child contained in s.25(3), should be included in the answer. The leading cases of *White v White* [2001] 1 AC 596 and *MacFarlane v MacFarlane* [2006] 3 ALL ER 1, which emphasise the importance of equality and fairness should be discussed in depth. Candidates should also explain the different types of orders that are available and how they can ensure that fairness and equality can be achieved e.g. a lump sum order or periodical payments order can be used to compensate a spouse for loss of earning power.

### Question Three

Yolanda and Zebedee have just separated after living together for over ten years. They never married and have always lived in rented property. They have 3 children: Annabel aged 9, Bonnie aged 6 and Candy aged 2. Yolanda has moved into her parents' large house. Zebedee has rented a two bedroomed flat. The children will live with Yolanda and stay with Zebedee every other Friday night. Zebedee has a job earning less than £800 per week.

Advise Yolanda as to how much child support she can expect Zebedee to pay and explain how your answer would change if:

- The children stayed with Zebedee two nights per week;
- Zebedee moved in with his new girlfriend, Delia and her son, Edmund;
- Zebedee won £1 million in the national lottery.

### Answer Guidance

This is an example of a short problem question which is broken down into four parts. The first part requires candidates to explain and apply the basic law relating to child support, contained in the Child Support Act 1991. Little information is given regarding Zebedee's salary and so it is not possible to actually calculate the amount payable, but students should refer to: the gross income scheme; qualifying children; the basic rate; the percentage payable for three children and the fee system. The second part of the question requires students to consider the impact of shared care (Schedule 1 Para 7), whilst the third part of the question involves a discussion of 'relevant other children' (Schedule 1 Para 2(3)). Information relating to the enforcement of child support calculations can also be included in the answer (s.29-41 Child Support Act 1991 and *R v Secretary of State for Work and Pensions ex parte Kehoe* [2005] UKHL 48). The final part of the problem asks candidates how the answer would change if Zebedee won £1 million. This requires candidates to explain the basic and higher rates and the maximum income that is considered under the Child Support Act (£3000 - Schedule 1 Para 10(3)). The possibility of applying to the courts for top-up maintenance (s.8 Child Support Act 1991) or for another financial order under Schedule 1 of the Children Act should be discussed with reference to relevant cases e.g. *J v C* (Child: Financial Provision) [1999] 1 FLR 152 FD.

#### **Question Four**

Discuss whether the problems relating to the Child Support Act 1991 have been rectified by subsequent reforms.

#### **Answer Guidance**

This essay question invites candidates to identify the problems associated with the system introduced by the Child Support Act 1991 to calculate and collect child maintenance, for example, the complexity of formula and the injustice caused by the lack of flexibility. The changes made by the Child Support Act 1995, the Child Support, Pensions and Social Security Act 2000 and the Child Maintenance and Other Payments Act 2008 should be discussed e.g. the introduction of departure directions / variations, the net income scheme, the gross income scheme, reductions for shared care, reductions for other relevant children, improved enforcement mechanisms etc. Students should ensure that they do not merely identify the measures that have been introduced to deal with the shortcomings of the legislation, but attempt to evaluate whether they are effective. In addition, candidates should consider whether there remain problems with the current system that have not been dealt with by subsequent reforms.