



Examiner's Comments

19 FAMILY LAW

September 2025 Examinations

The exam comprised of three questions. Candidates were required to answer all three questions. Question 1 was worth 20 marks, Question 2 was worth 30 marks and Question 3 was worth 30 marks.

Overview

Overall students performed well in the exam with thoughtful answers that applied the law to the facts. Each question covered different aspects of family law. Question 1 was concerned with divorce law and de facto relationships. Question 2 was concerned with parenting orders for children. Question 3 was concerned with the division of matrimonial property. Question 3 was the best answered question according to average marks. The degree of analysis and depth varied across the cohort. Better answers engaged with relevant family law cases and sections of the Family Law Act 1975 (Cth) with accuracy and relevant detail. Areas for improvement include focusing on the legal analysis and applying the legal doctrines to the fact scenario. Answers that were ambiguous or presented an answer without much engagement with the law did not do as well compared to students who were able to demonstrate their legal knowledge and analytical skills. It is important to engage with the question and problem scenario rather than simply repeating your notes.

Question 1

Question 1 was divided into two issues: divorce law and de facto relationships. It is important to answer the question that you are given rather than the question that you have pictured in your mind. The question expressly asks you to consider when Johnny would first become eligible to divorce Mary. Most answers addressed this point, but some answers omitted details on this issue. Better answers applied the relevant divorce sections of the Family Law Act 1975 (Cth) and divorce law cases. Divorce is focused on a question of law, whereas de facto relationships are focused on ascertaining questions of fact. For the issue of de facto relationships, it is important to consider the indicia of facts as established in case law and the section on de facto relationships in the Family Law Act 1975 (Cth) to determine the question of whether Johnny and Lilith are in a de facto relationship. The gateway requirement of a de facto relationship to be at least 2 years' long for a case to be heard in the Federal Circuit and Family Court of Australia was mostly mentioned in the answers. However, it was still expected that students would explore the legal nature of Johnny and Lilith's relationship status. While they are not separating or in dispute, their relationship is heading towards being a de facto relationship. Therefore, providing the concomitant advice would effectively advise Johnny about his current and potential family law situation.

Question 2

Question 2 was focused on children matters in the Family Law Act 1975 (Cth), particularly making a parenting order and addressing the issue of the overseas relocation of the children. Most answers explored the general considerations of the best interests of the child in the Family Law Act 1975 (Cth). Better answers applied relevant cases with each of the considerations. There was also the issue of the children's right to enjoy their Aboriginal culture. This was occasionally overlooked in some answers. In particular, the Family Law Act 1975 (Cth) expressly outlines that this is an additional consideration. Parenting issues are highly discretionary in nature, but any parenting order must still be grounded in the law and the facts. Another major issue is the overseas relocation of children. This was sometimes overlooked in a few of the answers. It was expected that there would be an exploration of cases on overseas relocation of children, particularly how the Courts have addressed how the relocating parent's wellbeing is attached to the best interests of the child and how a child can maintain a meaningful relationship with both parents.

Question 3

Question 3 was focused on the division of matrimonial property. The husband was a high income earner who made a significant financial contribution to the marriage. On the other hand, the wife made a significant non-financial contribution to the marriage by looking after the children of the marriage rather than pursuing paid employment opportunities. Most students were able to methodically explain the steps the Court uses to address family property issues according to the section on the alteration of property interests in the Family Law Act 1975 (Cth) and relevant case law. Better answers highlighted that special financial contributions are no longer given extra weight and that non-financial contributions are to be treated equally to financial contributions. It was also expected that students consider relevant cases on gifts regarding the wife's financial contribution to the purchase of the matrimonial home from her inheritance. Furthermore, students were also expected to consider the splitting of superannuation according to the Family Law Act 1975 (Cth) and case law. Some students considered spousal maintenance. This was not an issue that the question expressly asks you to consider, as no party is seeking spousal maintenance. In practice, spousal maintenance is rarely awarded as the Courts favour the one-off division of matrimonial property according to the clean break principle. However, the discussion of spousal maintenance would not necessarily be adverse to answering the question as it attempts to provide legal advice though other issues mentioned above would be more on point. Finally, it was expected that students explain whether a global or asset-by-asset approach would be more likely to occur. Most students presented their ideas about how the proportional split of the pool of matrimonial property might look like between the husband and the wife. Again, this is also quite a discretionary aspect of family law, but it was important to make an educated conjecture about the split of matrimonial property supported by the law and the facts.