

Chapter 5: Domestic Violence

Question One

Compare the approach taken by the Family Law Act 1996 (as amended) to non-molestation orders and occupation orders. Do you think that the law should be changed to provide better protection for the victims of domestic violence ?

Answer Guidance

Non-molestation orders and occupation orders are the primary remedies for victims of domestic violence and are available under Part IV of the Family Law Act 1996. This essay question invites students to compare the approach taken in relation to each order. The answer should begin with a basic explanation of each order and should then compare their availability, their effect and the consequences of breaching an order. The discussion should draw attention to the fact that non-molestation orders are available to a wide range of associated persons (*G v F (Non-molestation order: Jurisdiction)* [2000] 2 FCR 638), but occupation orders are more restricted. In addition, breach of a non-molestation order is a specific criminal offence, but breach of an occupation order is not. The reasons for these differences should be explored and will include reference to the fact that an occupation order is a significant infringement of the rights of the respondent and the fact that they can be made in situations that do not involve domestic violence (*S v F (Occupation Order)* [2000] 1 FLR 255). Students should then consider whether the approach taken is appropriate and whether sufficient protection is available to specific victims of domestic violence e.g. cohabitants. Candidates may include reference to the introduction of Domestic Violence Protection Notices and Orders by the Crime and Security Act 2010.

Question Two

Robby and Sandy met at school and started a romantic relationship in 2014, when they were both 19 years old. The couple began living together when Sandy became pregnant. Six months ago, Sandy gave birth to a son, Tyrone. Robby is convinced that he is not Tyrone's real father and as a result they have had numerous arguments since the Tyrone's birth. Robby has a violent temper and frequently shouts and throws objects when in a rage. One day, the couple were out shopping and bumped into a neighbour who jokingly stated that Tyrone looked nothing like Robby. Robby exploded, pushed Sandy, causing her to fall, which resulted in her badly bruising her legs and twisting her arm. Sandy was too afraid to go home and has been staying with a friend, Umberto. Robby is deeply sorry and is bombarding Sandy with telephone calls begging her to come home. The last call included a comment that if Sandy did not do as requested he will 'take action' because he will not stand by and let Sandy make a fool out of him. Sandy wishes to return home as she cannot stay with Umberto indefinitely, but is afraid of Robby. Advise Sandy, who does not wish the police to become involved.

Answer Guidance

Sandy is clearly a victim of domestic violence. This problem question therefore requires candidates to discuss the orders that are available to protect her from Robby in the future. First, students should discuss non-molestation orders which are available under s.42 of the Family Law Act 1996. The answer should include a definition of molestation, an explanation of associated persons (s.62(3)) and the factors that the court will consider when deciding whether to make the order (s.42(5)). Students should point out that a non-molestation order can be made ex-parte (s.45), that an undertaking should not be accepted in a situation where actual violence has been used (s.46(3A)) and that breach of a non-molestation order is a specific criminal offence (s.42A). As Sandy wants to return home, she should be advised as to the availability of an occupation order, which can be used to oust Robby from the property and allow her and Ryan to re-enter it. Students should point out that the availability of an occupation order depends upon whether Sandy and Robby are entitled to occupy the property and whether the couple are married or not. The difference between entitled applicants (s.33 of the Family Law Act 1996) and non-entitled applicants (s.35-38) must be explained and reference should be made to the factors that are considered by the court e.g. the balance of harm test (*B v B* [1999] 1 FLR 715).

Question Three

Critically analyse the response of the criminal law to domestic violence.

Answer Guidance

This essay question requires students to provide an overview of the provisions of the criminal law that may apply in a domestic violence context. Due to the breadth of this, it is not possible to provide a detailed explanation of the relevant offences, however, students must make an attempt to evaluate, rather than merely describe the law. Students should begin by explaining that there is no specific offence of 'domestic violence' and that the provisions of the Criminal Justice Act 1988 (common assault and battery) and Offences Against the Person Act 1861 (ABH, GBH and wounding) will apply: the crimes of harassment and stalking, as set out in the Protection from Harassment Act 1997, may also be committed in a domestic context. If the victim dies of his or her injuries, a fatal offence against the person is committed (e.g. murder or manslaughter) and it should be noted that a parent can be prosecuted for failing to protect a child who was at risk of death or serious harm under s.5 of the Domestic Violence, Crime and Victims Act 2004. If a sexual offence is committed, the Sexual Offences Act 2003 is applicable and students may refer to the abolition of the marital rape exemption by the House of Lords in *R v R (Rape: Marital Exemption)* [1992] 1 AC 599. Students should be aware that forced marriage and female genital mutilation are forms of domestic violence (see Cross Cross-Government Definition, 2013) and both constitute criminal offences (as a result of the Anti-social Behaviour, Crime and Policing Act 2014 and the Female Genital Mutilation Act 2003 respectively). Other recent developments, such as the introduction of Domestic Violence Protection Notices and Orders by the Crime and Security Act 2010 and the creation of a specific offence of controlling or coercive behaviour by the Serious Crime Act 2015 should also be explained and evaluated.