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Qualifying Test Paper:

00483: District Judge (Magistrates' Courts) 2010
Family Paper

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This paper should be left in the test room at the end of the test session. The contents of the test should not be discussed with or divulged to anyone.

CANDIDATE BRIEF – PLEASE READ CAREFULLY BEFORE YOU START

You have 90 minutes to complete the entire test. There are ten questions. You should answer **all** of them. You may answer the questions in any order. However, you must clearly indicate which question you are attempting. **Answers may be given in bullet points.**

This test has been set to assess:

- Intellectual Capacity – the ability quickly to absorb and analyse information
- Authority and Communication Skills – the ability to explain procedure and any decisions reached clearly and succinctly to all those involved

There is no need to recite the facts when answering the questions, unless you find it helpful to do so. In addressing the problems set you should deal with them on the material that you have – deciding to adjourn for further information will not score marks.

Marks are available for:

- Coverage of key points – does your answer address the key points to which the question gives rise?
- Quality of conclusion – is your conclusion clear? Is it supported by and does it derive from your reasoning?

To obtain full marks you must cite specific sections of relevant statute, and specific Practice Directions in your answers.

Marking scheme

Question	Coverage of key points	Quality of conclusion	Total Marks
1	5	0	5
2	20	0	20
3	7	0	7
4	5	1	6
5	11	4	15
6	13	1	14
7	7	0	7
8	8	0	8
9	16	1	17
10	18	6	24
Discretionary marks for good points not anticipated by the marking scheme			10
Total			133

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TEST PAPER

The Royal Borough of Kensington and Chelsea had obtained an Emergency Protection Order (EPO) in relation to four children. They are Umair aged 10, Eliska aged 9, Leafie aged 7 and baby Mercy aged 5 months who was being breastfed. Umair, Eliska and Leafie had told their teachers that their father hit them with a stick and a belt on a very regular basis. They had showed their teacher a number of bruises and scars of varying ages. There have been on-going concerns in relation to the older children. These concerns were that they were not being fed adequately at home, that they arrived at school smelling of urine and in dirty and torn clothing, that they arrived at school late more often than on time and had missed 50% of their expected attendance at school. Mercy is up to date with her immunisations and the health visitor and GP have reported no concerns.

The mother Dipka has refused to admit that the children were beaten at all. The father Alberto has denied all charges in the interview but has been charged with a number of offences of child cruelty. He is on conditional bail with a residence condition that he lives in Liverpool and a condition not to attend the family address.

Since the EPO was made the children have been placed with foster parents. The experienced foster carer has told the local authority that Umair's behaviour is destabilising the placement and he is putting pressure on his sisters to behave in a similar way. She noted that all three older children are very difficult to control and they appear not to be used to having to conform to any boundaries. The care plan is to separate Umair from his three sisters and new foster carers have been found for him to go to. The new foster family is of a different ethnicity and religion to the children's birth family. They live 15 miles from his school and he will have to move schools. Umair has stated that he wishes to remain with his sisters.

All three older children are clear in their view that they now wish to return home.

The First Appointment took place in front of a legal adviser who gave initial case management directions which included making arrangements for the contested interim hearing on 28 May 2010.

On 28 May 2010, the local authority comes before you to apply for an interim care order in relation to the children with a care plan that the children would remain in foster care whilst assessments take place including a child and adolescent psychiatrist who will assess the three older children. The mother is present in court and is opposing the application. The children's father who has parental responsibility for the four children is not at court but is represented. He neither consents to nor opposes the application as regards the elder three but opposes the order in relation to baby Mercy. The children's guardian although appointed has not been allocated but the children are represented by Mr Olpas.

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The father's representative asks for the matter to be adjourned. He does not know why his client is not at court. Furthermore he says his client is contesting the criminal charges and that any consideration of the allegations made by the children should await a resolution of the criminal case.

The children's maternal grandmother is at court and wishes to be joined as a party to the proceedings. She used to have the children to stay at weekends and wishes them to be returned to their mother's care. The children have made allegations that she used to beat them with a hairbrush when they misbehaved.

The mother's representative submits that the case should be transferred to the Principal Registry as it is too complex for the Family Proceedings Court.

You hear evidence from the allocated social worker and the mother. The social worker tells the court that the father was at home yesterday when she visited, he also answered the mother's mobile when she rang the telephone two days ago. In evidence Dipka claims the father has left the family home and is complying with his bail conditions. You hear submissions.

Question 1 (5 marks)

The Practice Direction 'Public Law Proceedings Guide to Case Management' made by the President of the Family Division, which came into effect in April 2010, has as its overriding objective that of enabling the court to deal with cases justly, having regard to the welfare issues involved. What are the five principles you apply to ensure that public cases are dealt with justly and in accordance with the Practice Direction?

Question 2 (20 marks)

The Practice Direction requires you to actively manage a case throughout the proceedings. What must you do to ensure that the public law cases are actively case managed?

Question 3 (7 marks)

What are the maximum permissible timescales for the Case Management Conference, Issues Resolution Hearing, Advocates Meeting or meetings and Final Hearing in the Public Law Outline? Are you allowed a different approach to the one contained in the Public Law Outline? If so, what should you do?

Question 4 (6 marks)

In this case what steps would you take in relation to the father's absence? Would you proceed in his absence? Explain your decision.

Question 5 (15 marks)

Identify any preliminary issues that you would consider other than allocation and adjourning the case because the father is absent. What do you decide in relation to the preliminary issues that have been raised. What factors do you take into account?

Question 6 (14 marks)

What do you decide in relation to allocation in this case? What are the general principles you consider when coming to a decision about allocation?

Question 7 (7 marks)

Are there any matters you would raise with the local authority in relation to the care plan as regards Umair and Mercy?

Question 8 (8 marks)

What is the threshold you should apply before an interim care order could be made in this case? On which party does the burden of establishing the existence of the interim threshold criteria exist? Which standard of proof should you apply at this stage of the proceedings? For what maximum period of time could you make an interim care order?

Question 9 (17 marks)

You are writing your judgment in this case. Do you make findings of fact? Which sections of the welfare checklist would you refer to? What factors in this case do you take into account when considering the welfare checklist?

Question 10 (24 marks)

Other than the welfare checklist, what principle or principles must you consider before making any order in this case? Which order or orders, if any, would you make in relation to each child? Any why?