



**THE LAW SOCIETY OF SCOTLAND  
EXAMINATIONS**

**FAMILY LAW**

**Tuesday 8 August 2017**

**1330 – 1530  
(Two Hours)**

**Candidates should answer THREE questions.**

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**Question 1**

Richard and Ella have been cohabiting for four years, together with their three children, Rosa, Evie and Lily.

Rosa, who is 11 years old, is Richard's daughter from an earlier relationship. Richard and his late wife Anna conceived Rosa during their honeymoon but Anna sadly died not long after Rosa was born.

Evie, who is six years old, is Ella's daughter from an earlier relationship. Ella and her former partner Emily received reproductive treatment shortly after registering their civil partnership. Emily was implanted with an embryo made of Ella's egg and the sperm of an anonymous donor. When Ella and Emily's relationship was dissolved two years ago, they agreed informally that Evie should live with Ella, although Emily continues to see her regularly.

Lily was conceived by Richard and Ella, in the traditional manner. She was born three weeks ago by way of caesarean section.

Richard and Ella ask for your advice on their legal positions in respect of the children. They think of themselves as a 'proper family' and ideally they would like Richard to be the father of all three girls and Ella to be their mother. They ask you to clarify their legal status and rights in respect of each of the children. Ella specifically asks whether the sperm donor has any rights in respect of Evie.

**Question 2**

Explain, with detailed reference to authority, the current grounds for divorce and dissolution (civil partnership) in Scotland, highlighting any differences between same sex and different sex couples. In what situation can couples make use of the simplified procedure?

### **Question 3**

James (25) and Joanna (27) recently married in an idyllic ceremony on the banks of Loch Lomond. Although Scottish by birth, they both live and work in London but decided to come back to Scotland to get married. As committed humanists, they chose Alison, a humanist marriage celebrant, to conduct their wedding ceremony. Two days before the wedding, Alison got in touch to say that she was unwell but that her colleague, Fiona, would do the wedding instead. There was a last minute crisis when George, James' younger brother and the best man, got lost on his way to the ceremony but a young friend of the family, Ed, stood in for him. After the ceremony, they left Ed to register the wedding.

Sadly the honeymoon was not quite as idyllic as the wedding day had been, Joanna is having serious second thoughts about marriage and wonders whether it was legally valid. She read in a magazine that humanist ceremonies are not legally binding and that marriages can only take place in specially approved buildings. She is also hoping that perhaps it was not legal to have Ed as the best man. Advise Joanna on the legal requirements for the creation of a valid marriage, highlighting in particular any issues which seem relevant to the particular facts.

### **Question 4**

Karen is struggling to cope financially since her partner, John, left the family home three months ago leaving her with their three children – Peter (18), Jo (14) and Lucy (11). Karen is a part-time classroom assistant and John, who has been the main breadwinner throughout their relationship, is a self-employed builder. John has moved in with Sharon (22 and unemployed) and her young daughter Lisa (3). He has told Karen that he is really serious about Sharon and in fact plans to marry her and bring up Lisa as his own.

John has agreed that Karen and the children can remain in the family home for the time being but that he is not prepared to make any contribution to their living expenses. He says it is time Karen got a better job and started paying for herself and the children.

Advise Karen as to any legal responsibilities John has towards the children in terms of their financial support.

### **Question 5**

Mark has been living with his partner Colin for the past five years. The relationship has recently broken down and Mark has moved out. He feels emotionally and financially bruised. Mark has heard that cohabitants have rights in Scotland and he asks your advice as to any financial claims he might make against Colin. With reference to appropriate legal authority, advise Mark.

## Question 6

Andy (40) and Sue (38) are planning to divorce after 15 years of marriage. They have two children, aged 12 and 14 who will have their principal home with Sue. Andy is a partner in a firm of architects, with an annual income of around £95,000. Sue is a design assistant with a take home pay of £24,000.

- The matrimonial home, which is in joint names, was bought shortly before they married. Andy paid 50% of the purchase price of £180,000 with the proceeds from the sale of his previous flat. The house was recently valued at £475,000 and there is a current mortgage of £20,000. Sue wants to stay in the home to give the children some security and is prepared to take over the remaining mortgage. Andy wants to buy a two-bedroom flat and needs to release some capital in order to finance it.
- Andy has a substantial private pension fund, currently around £250,000, built up over the years.
- Sue inherited £70,000 from her mother when she was 30. She used £40,000 of it to build a studio in the garden of the family home and the remainder is in her investment account.

Sue comes to you for legal advice. She is keen to sort things out without going to court but at the same time is worried about how she will manage financially when they are divorced. Sue would love to take a postgrad design course to improve her career opportunities but is worried that she will not be able to afford it and will be stuck in a low-paid job for the rest of her days.