



**THE LAW SOCIETY OF SCOTLAND
EXAMINATIONS**

TRUSTS AND SUCCESSION

Tuesday 8 August 2017

**1330 – 1530
(Two Hours)**

**Candidates MUST answer the question in Part A and
TWO questions in Part B. Candidates may make use of
any un-annotated statutory material.**

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PART A

Question 1

INTESTATE SUCCESSION

This question has two parts. In each part assume the date of death is July 2017 and that the *de cuius* is survived by a son as well as by his life partner who in part (a) is a spouse and in part (b) is a cohabitant.

- a) Identify the legal basis and extent of the various entitlements of a surviving spouse where the *de cuius* dies intestate and domiciled in Scotland with heritable property (including a house in which the spouses were ordinarily resident immediately prior to the death of the *de cuius*).
- b) As the second part of the question identify the legal basis and extent of a surviving cohabitant in similar circumstances.

END OF PART A

PART B

Question 2

With reference to appropriate authority, set out the rules for formal validity of a will in Scots law assuming it is executed in 2017. In your answer you should also deal with mortis causa trusts. In your answer you may wish to comment upon the following examples:

- a) A single page will signed by the testator halfway down the page. There are no witnesses.
- b) A three page will signed only on the last page by the testator. There are no witnesses.
- c) A four page will signed on every page by the testator but not witnessed except on the second page.
- d) A five page will signed on every page by the testator and witnessed by a 15 year old boy on the last page.

Question 3

Harry Jarvis died in July 2017. He owned a house jointly with his wife Mandy and there is a survivorship clause in the title. The house is located in Ayr and is worth, in total, £500,000. It was free of debt. He has left a will dated 2000 comprising a number of bequests expressed as follows:

- a) "I wish my son Jimmy to inherit my pet dog".. Jimmy however died in 2005 leaving a daughter Tina. She is still alive.
- b) "I wish my eldest daughter to inherit the contents of my bank account in Kilmarnock. Harry had three daughters. One called Lucy born in 1940 died in 2008 leaving a son called Fitzroy. He had two other daughters who were twins born in 1942. Their names are Rose and Millicent. They are both still alive.
- c) "I want my grand-daughter Tina to inherit my Ford Focus". Harry crashed the Ford Focus in June 2017 and it was a write off. He received £4000 as an insurance pay out for the car. He has not bought a new car yet.
- d) "I want my son to inherit my sheep". In the year 2000 as at the date of the will Harry had ten sheep. As at the date of his death he had 43. Of the original 10 sheep only two are still alive and owned by Harry.
- e) There is a residue clause conferring an entitlement to the residue on the Church of Scotland General Trustees.

Identify the parties who are entitled to be beneficiaries of the estate of Harry Jarvis and indicate to which part of the estate they have an entitlement. Confirm, where appropriate,

what extra information you would need to carry out this task. Make reference to appropriate authority in your answer.

Question 4

Joe Paisley died in 2016 leaving a trust deed and settlement in the following terms:

- a) "I wish to have all my cash insofar as it exists at in English notes gathered up and for these notes to be burned in my back garden".
- b) "My grandson, Joe is to be given a provision of £50,000 a year until acquires his degree at Aberdeen University." It turns out Joe Paisley has no grandson's but he does have a granddaughter called Joanne. She is studying law at Glasgow University.
- c) "My daughter, Mabel, is to be given a provision of £5,000 a year to qualify as a nurse in Leith General Hospital." The hospital shut down 20 years ago and there is now a modern general hospital in Edinburgh.
- d) "£10,000 is to go to the upkeep of my pet tortoise, Lucinda." Lucinda is now 50 years old and in bad health.
- e) "I want £70,000 to go to Charities for cancer".
- f) "As regards all the rest, give it to the Minister in Stonehaven." Joe attended the Baptist Church in Stonehaven.

Joe is survived by his son Jimmy, his daughter Mabel, his grandson Joe (who is a son of Mabel) and also by the tortoise.

Consider the validity of these provisions and identify the parties who are entitled to be beneficiaries of the estate of Joe Paisley. Make reference to appropriate authority in your answer.

Question 5

With reference to appropriate authority, answer BOTH parts of this question:

- a) Set out the various means by which a trustee may be removed from office in a Scottish trust, outline the circumstances in which this would be appropriate and identify the parties who may be entitled to seek such removal?

AND

- b) Set out and critically comment upon the investment duties falling upon a trustee in a Scottish trust.

Question 6

Outline and critically comment upon the procedure of appointment of an executor dative and an executor nominate in Scots law and set out how that person obtains title to the estate of the deceased.

END OF PART B

END OF PAPER