



**THE LAW SOCIETY OF SCOTLAND
EXAMINATIONS**

FAMILY LAW

Tuesday 6 February 2018

**1330 – 1530
(Two Hours)**

Candidates should attempt THREE questions.

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Question 1

To what extent is divorce available in Scotland to all parties who believe that their marriage is at an end?

Question 2

James and Karen married in June 2010 and separated in January 2018. They have no children. They are both 38 and are social workers employed by the local authority. In 2016, at James' suggestion, Karen reduced her working hours to three days so that she could focus on her health and fitness in the hope of getting pregnant. Prior to the marriage the couple purchased a house in joint names. The purchase price was £180,000 with the house being valued at £210,000 at the date of separation. Karen paid a deposit of £100,000 with money which she had inherited from her father and the couple obtained a bank loan for the remainder. Repayments of the loan have been made jointly. At the time of separation there was an outstanding loan of £60,000.

The couple also own the following items:

- a) furniture in the house bought by James from his salary valued at £10,000 at the date of separation;
- b) a car worth £3000 at the date of separation which was a birthday present from James to Karen;
- c) an ISA which Karen took out on her 21st birthday and which had a value of £9000 at the date of separation;
- d) £15,000 in a personal savings account in Karen's name which is the remainder of a compensation payment she received in 2008 for injuries she had incurred in a car accident. She has occasionally dipped into these savings to contribute to house upkeep and holidays;
- e) a loch-side chalet, worth £40,000 that James bought from his parents four years ago and which he uses mainly for fishing weekends. Karen was furious at the time because she wanted them to invest in a new kitchen.

Advise Karen and James as to the way in which the court might deal with their financial affairs in their forthcoming divorce.

Question 3

Alison and Tom have been cohabiting for several years, together with their children from previous relationships, when they decide they would like to have a child together. Alison has a daughter, Amy (8), conceived as the result of a brief affair. She never told the father who had moved on long before her pregnancy began to show. Tom has a son Andrew (12), born to him and his wife Simone, who sadly died when Andrew was a baby. As Alison is having no success in conceiving naturally, they begin treatment at a registered clinic and finally, thanks to donor insemination, she conceives and gives birth to twins, Max and Sophie. The whole family is delighted. However, Alison's mother who has very traditional views and does not approve of 'modern families' puts a doubt in their minds that they are not really the legal parents of the children.

Alison and Tom already think of themselves as the mother and father of all of the children. They seek your advice as to whether this is indeed their legal status and, if not, what action they might each take to be recognised as the legal parents of all of the children.

Question 4

Andy and Gillian live with their baby daughter, Rosie and Gillian's son Calum (14), in a housing association flat. Both are named on the tenancy agreement.

Recently there has been growing tension between Andy and Calum, with Andy disapproving of Calum's late nights out with older boys. This has led to several arguments between the two, sometimes escalating into physical fights with the two pushing each other around and hitting or slapping each other. Last Saturday, Andy came home drunk after an afternoon at the football. Another argument erupted with Calum, which concluded with Andy knocking him to the ground and kicking him in the stomach. Andy then turned on Gillian, shouting that it was all her fault for being too soft on the boy. He pushed her back against the wall where she hit her head. By the time, Calum and Gillian got up, Andy had left the flat and in fact did not come home until the following Friday. Both Calum and Gillian required treatment at the Accident and Emergency department of the local hospital, although fortunately there was nothing broken.

Rosie is quite an unsettled baby and, although Gillian rushes to calm her down before Andy complains about her crying, he is always shouting at her and telling her what a bad mother she is. Recently he has started taking money from the joint housekeeping purse every time Rosie cries during the night. A few times, in desperation, Gillian has had to ask her sister to lend her some money for food although she is terrified that Andy will find out.

While Andy was gone, Gillian could not help notice how much more relaxed she felt and she was shocked at the sinking feeling in her stomach when she

heard his key in the door. She knows that she could ask her sister if they could come and stay with her but Gillian is reluctant to uproot the children from their home. Gillian asks you about any legal remedy that might enable her to remain in the home but to feel more secure.

Question 5

Nina (5) and Nico (7) have had their primary home in Stirling with their mother, Antonia, since their parents divorced a couple of years ago. Their father, Brian, lives only a few miles away but, although it was agreed that he would have regular contact with the children, including residential contact every second weekend and during the school holidays, in fact he almost never sees them. A workaholic with a new partner, Brian has made it very clear that he has no interest in the children. His lack of interest combined with his regular failure to pay the agreed child support has left Antonia struggling to make ends meet. Antonia, originally from Naples, feels increasingly isolated and so, when her sister, who runs a successful estate agency in Naples, offers her a partnership in the business, she decides to make the move. The children are both young – Nina is due soon to begin school – they love their Italian family and they both speak fluent Italian. She tries to phone Brian to tell him about the plans but he never answers his phone and, although she leaves him a voicemail, he does not call back.

Antonia goes ahead with plans to move, she enrolls both children in an excellent school in Italy and is in the midst of packing up, when out of the blue she receives a strongly worded letter from Brian's solicitor making it clear that he will take all action necessary to ensure that they stay in Scotland.

Advise Antonia as to whether Brian has any right to prevent her taking the children to Italy and as to what action she might take if he tries to stop them.

Question 6

With reference to relevant case law, explain what financial orders may be sought by an ex-cohabitant following the breakdown of their relationship.

END OF QUESTION PAPER