



**THE LAW SOCIETY OF SCOTLAND
EXAMINATIONS**

TRUSTS AND SUCCESSION

Tuesday 6 February 2018

**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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SECTION A

Question 1

INTESTATE SUCCESSION

This question has TWO parts.

You are acting as a solicitor for the executor of James O'Dowd who died domiciled in Scotland on 21 May 2017. He is survived by his life partner, Samantha, who in part (a) is a spouse and in part (b) is a cohabitant.

James has left a will leaving everything to Samantha except for a bequest of £10,000 given in favour of Montrose Pipe band. After you begin the ingathering of the estate, information comes to light that James had a son out of wedlock in 1970. His name is Fred Smith and he lives in London. The moveable estate comprising furniture in the matrimonial home totals £25,000 and there is approximately £25,000 in cash and other moveable's. James owns a 50% share in the matrimonial home which is situated in Stonehaven. The total value of the house is £250,000. It is free from debt. Samantha has taken separate legal advice and has indicated she wishes to renounce her entitlement under the will. In your answer you should consider the implications of Kerr, Petitioner 1968 SLT (Sh.Ct.) 61.

As an answer to this question:

- a) Identify the legal basis and extent of the various entitlements of a surviving spouse and the son where the *de cuius* dies intestate and domiciled in Scotland with heritable property (including the matrimonial home 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 the entitlements of a surviving cohabitant and the son in similar circumstances.

END OF SECTION A

SECTION B

Question 2

With reference to appropriate authority, set out the rules for the formal validity of a will in Scots law assuming it is executed in Scotland in 2010 by a testator domiciled in Scotland. 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 two page will signed by the testator halfway down the second page. There are no witnesses.
- b) A four page will signed only on the last page by the testator. There are no witnesses. There is also a schedule, unsigned, containing the addresses of all the beneficiaries named in the will.
- c) A single page will signed at the bottom of the page by an attorney acting for the testator but not witnessed.
- d) A ten page will signed on every page by the testator and witnessed by a 12 year old girl on the last page.

Question 3

Comment critically upon the doctrine of ademption and its application to a will made by a testator who later makes an enduring power of attorney and then requires to go into residential care. In your answer you should consider the effect of a sale of the home owned by the testator to pay the care fees and other related costs.

Question 4

Florence McSween Smith, domiciled in Scotland, died in December 2017 leaving a relatively complex trust deed and settlement. It contains the following provisions:

- a) "I wish to have all my private letters collected, particularly the correspondence with my girlfriend, collected and burned. I know it is worth a fortune if sold to the tabloid press but I don't want to embarrass her".
- b) "My cousin Jim who is a solicitor in Edinburgh is to receive £50,000". It turns out Jim is an advocate residing in Glasgow but Florence also has a cousin called Jemima who is a solicitor in Edinburgh.
- c) "I would like my daughter Samantha to marry Fred and she can have £100,000 when she does".
- d) "I want £100,000 to go to Charities for cancer or diabetes. The executor can decide". No executor is appointed in the trust deed.
- e) "Everything else to Sally". Florence has a sister Sally and a niece called Sally. They are mother and daughter.

Florence is survived by all the named beneficiaries.

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

Question 5

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

- a) On what basis and by what procedure may a trustee be removed from office in a Scottish trust?

AND

- b) Critically comment upon and outline the similarities and distinctions between (a) an executor and (b) a trustee in a *mortis causa* trust.

Question 6

Outline and critically comment upon the duties of an executor to ascertain the level of debt of a deceased and how and when these should be settled.

END OF PART B

END OF QUESTION PAPER