

**THE LAW SOCIETY OF SCOTLAND
EXAMINATIONS**

TRUSTS AND SUCCESSION

Tuesday 7 August 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

Compare and contrast the benefits available under the law of intestate succession to a surviving spouse and a surviving cohabitant in Scots law. In your answer you should make reference to prior rights, legal rights, free estate and any discretionary provision.

END OF SECTION A

SECTION B

Question 2

With reference to appropriate authority, examine critically the requirements of essential validity as they apply to a Scottish will. Comment upon how a solicitor instructed to prepare a will for a client can take steps to ensure compliance with these requirements.

Question 3

Compare and contrast the effect of the doctrines of (a) ademption (b) abatement and (c) *legatum rei alienae* as they operate in respect of a will that purports to make a bequest of an item not owned by the testator.

Question 4

Letitia Campbell, domiciled in Scotland, died at the age of 68 on 21st March 2017 leaving a short document that may or may not be a will. It is a single sheet ripped out of a school note book. You are asked to comment on the validity of the will and as to how confirmation may be obtained as it appears to have some oddities in relation to formal validity and identification of beneficiaries. It turns out Letitia committed suicide shortly afterwards as she suffered from depression. The police found it on top of a load of insurance policies when they broke down the door.

The document consists of one page written in Letitia's handwriting and contains the following wording. "Mary, please take everything you want. I am sorry it came to this". The paper is then signed. There are no witnesses. Then, underneath the signature there is P.S. "Let Jimmy have the jewellery and my car". There is no further subscription. There is no express nomination of an executor.

You have checked and, so far as can be ascertained, there are no other testamentary documents except that Letitia owned a house along with her sister Mary Angeline Campbell and it is owned 50/50 with a survivorship destination contained therein. The small separate flat attached to and comprised within the title of the same house is also subject to a lease in favour of her Letitia's niece, Mary Sloane.

In this context answer the following questions:

- a) Is this single page document a formally valid will?
- b) How are the beneficiaries identified and who are they?
- c) Who is entitled to be executor and what is the process for appointment?

Make reference to appropriate authority in your answer.

Question 5

With reference to appropriate authority, examine critically the doctrine of conflict of interest and how a trustee may be found liable for such.

Question 6

Outline and critically comment upon the investment duties of a trustee in a private trust. In your example you should consider the examples of (a) a trust set up to provide an income for a widow and young children of the trustor and (b) the trust set up to hold the property and assets of an organisation like a rugby club or church. In your answer you may wish to comment upon "ethical" investments.

END OF SECTION B

END OF QUESTION PAPER