



**THE LAW SOCIETY OF SCOTLAND
EXAMINATIONS**

FAMILY LAW

Tuesday 13 August 2019

**1330 – 1530
(Two Hours)**

Candidates should answer THREE questions.

***Materials permitted in exam hall: Avizandum Family
Law Statutes***

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Question 1

The Scottish Law Commission is currently considering reform of the law relating to cohabitation as set out in ss25-28 of the Family Law (Scotland) Act 2006. With reference to case law, explain some of the difficulties which the current law presents to the courts and highlight those aspects of the legislation most in need of change.

Question 2

Andy divorced his wife Kate in 2017 following his confession of a homosexual relationship with Brian. Andy and Kate had one daughter, Ciara (aged two at the time of the divorce), who continued to live with Andy. Kate was suffering from depression and found it difficult to spend time with Ciara. Following the divorce, Brian moved into Andy's flat and a year later they entered into a civil partnership. Ciara continues to live with them full time, together with Graeme, who is Brian's 12-year-old son from a previous relationship. Brian had been married to Graeme's mother for several years before she died in a car crash when Graeme was still a baby. At weekends, Andy and Brian also look after 2-year-old Jade. For the remainder of the week, Jade lives with her mother, Maria, and Maria's civil partner, Emily. Jade is the biological child of Brian and Maria. She was conceived following a sperm donation made by Brian to Maria on the understanding that he would be involved in the child's life. Brian did not attend Maria's IVF treatment sessions, since all agreed it would be more appropriate for Emily to be there. Brian is not named on Jade's birth certificate, although Brian, Maria and Emily all understand him to be Jade's father.

Having formalised their own relationship, Andy and Brian are keen to formalise their ties to the three children. Advise them as to who are the legal parents of the children at present and suggest the possible routes they might take to obtain parental status and responsibilities and rights where they do not presently exist.

Question 3

Antonio, a 23-year old Italian living in Edinburgh and Amanda, a 35-year old divorcee from Aberdeen, got engaged a month ago and are planning to marry as soon as possible. Amanda would love a humanist wedding, but Antonio has never heard of such a thing and is not sure it would be legally valid. Antonio's parents are desperate to stop the wedding going ahead as they are strict Roman Catholics and cannot accept the idea of their son marrying a divorcee. They would both like to marry by the sea and dream of a beach wedding. Neither of them is very practical or organised and, caught up in their romance, they have no idea where to begin in terms of organising their wedding.

Advise Antonio and Amanda as to the legal requirements of marriage in Scotland and as to whether their various preferences could be accommodated. Advise them too as to whether or not Antonio's parents have any legal basis on which to interfere.

Question 4

Paul and Anna married in 2010 and have one child, Eva, born in 2011. They both qualified as teachers in 2007 and have worked since, although while Paul works full time, Anna reduced her hours to 50% following her return to work from maternity leave. They recently separated and agreed to divorce. They have also agreed that, after the divorce, Eva will have her main residence with Anna although Paul will have regular contact, including overnight stays. Anna would like to remain in the matrimonial home, particularly as Eva is so settled there but Paul also needs to find somewhere to live with enough space for Eva to have her own room. Their assets are as follows:

- (a) the matrimonial home purchased in joint names in 2009 for £300,000. A deposit of £150,000 was paid using money that Anna had inherited from her grandparents and they took out a mortgage for the remainder. Paul pays the monthly mortgage payments direct from his bank account. The house was valued at £400,000 when the couple separated but is now worth £420,000.
- (b) Paul owns a car worth £5,000 at the date of separation, which is used mainly by Anna for commuting to work and transporting Eva to school and her various after school activities. Paul also owns a motorbike, worth £8,000, which he bought around 12 months ago to get out into the countryside at weekends.
- (c) Paul's parents died in 2008 and, as an only child, he inherited their joint estate of £350,000. Shortly after Eva was born, he used £200,000 to buy a holiday cottage in the Highlands which they used regularly for family holidays. He kept the balance of £150,000 in a savings account.

- (d) They have a joint bank account with a current balance of £10,000. Anna has no other savings.

Anna is particularly concerned about the impact on her income – and her occupational pension - of her switch to part time work.

Ideally Paul would like to reach a financial settlement without going to court but Anna is concerned that she will not receive her full entitlement. Advise Anna on the orders she might seek from the court and what the likely outcome would be, so that she can make a fully informed decision as to whether or not to settle.

Question 5

What protections are provided by the Matrimonial Homes (Family Protection) (Scotland) Act 1981 to a non-entitled spouse who is experiencing domestic abuse?

Question 6

Explain the grounds and procedure for seeking divorce in Scotland.

END OF QUESTION PAPER