

**THE LAW SOCIETY OF SCOTLAND  
EXAMINATIONS**

**TRUSTS AND SUCCESSION**

**Monday 12 August 2019**

**1000 – 1200  
(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**

Set out and comment critically upon the entitlements of a surviving child, James MacPherson on the death of his father (Louis MacPherson) on the basis that Louis died intestate, domiciled in Scotland, on 1 July 2019.

Would the matter be different if:

- (a) Louis never married James' mother Sally?
- (b) Louis is now married to Esmarelda who is not the mother of Louis?
- (c) Louis and Esmarelda have a child called Marius who is ten years old?
- (d) Louis has indicated frequently in emails that he could not stand James and never wants to see him again or give him a penny?

**END OF SECTION A**

## SECTION B

### Question 2

With reference to appropriate authority, examine critically the protections afforded by Scots law to a testator in a Scottish will where that testator may suffer from a certain degree of weakness of mind. In your answer you should comment, *inter alia*, upon the doctrines of (a) insanity, (b) facility and circumvention and (c) undue influence. In your answer you should specifically deal with the situation of an elderly resident in a nursing home.

### Question 3

Identify and comment critically upon the benefits and drawbacks of using a special destination in a title to heritable property as an alternative to the law of succession such as leaving a bequest of the relevant share in the title to a beneficiary.

### Question 4

Set out and critically examine the requirements of FORMAL VALIDITY as they apply to a Scottish will. Comment upon how a solicitor instructed to prepare such a will for a client can take steps to ensure full compliance with these requirements. In your answer you should also outline what remedial steps can be taken if there is no such full compliance before the testator dies. Make reference to appropriate authority in your answer.

### Question 5

How does the doctrine of *auctor in rem suam* limit the actions of a trustee in a Scottish trust? In your answer you should refer to appropriate authority.

### Question 6

“In a Scottish trust, the beneficiaries are not the owners of the trust property: there is no such thing as Equitable ownership in Scots law”. Comment critically upon this statement and make reference to appropriate authority.

END OF SECTION B

END OF QUESTION PAPER