



**THE LAW SOCIETY OF SCOTLAND
EXAMINATIONS**

**SCOTS PRIVATE LAW
PAPER TWO**

Tuesday 13 August 2019

**1330 – 1630
(Three Hours)**

Candidates should attempt FIVE questions

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Question 1

Simon and Petra married on 1 January 2009. They separated on 1 January 2019. Throughout their marriage they lived in Edinburgh. They have no children. Their financial circumstances are as follows:

- Title to the family home (67 Wallace Place) is in joint names. The property at 67 Wallace Place was valued at £700,000 in 2017 but was only worth £610,000 on 1 January 2019.
- Simon has paid into a pension policy since 2002. At 1 January 2019, his pension was worth £300,000.
- Petra has paid into her pension since 1998 too, but she took several years off work due to ill health and she works part-time. Her pension was valued at £80,000 on 1 January 2019.
- Petra sold her small cottage in Peebles 4 weeks before the couple were married. The profit, £100,000, was used as a down-payment on the present family home at 67 Wallace Place.
- In 2010, Simon inherited a clock worth £50,000 from his great uncle.
- Petra was gifted £8,000 from her mother in 2015.
- Simon's parents gave Petra and Simon a wedding gift of £20,000 towards the purchase of 67 Wallace Place and their first car. The car has since been sold and the profits used towards home improvements.

Answer the following two questions based on the information above:

Outline the key sections of the Family Law (Scotland) Act 1985 which regulate financial provision on divorce and dissolution.

Explain which of the above assets are likely to be considered matrimonial property by the court.

Question 2

How does Family law in Scotland provide for children in need of urgent, short-term and long-term support, care and protection?

Question 3

Norma and Eva, a same sex couple, plan to get married in January 2020. They want to have a baby together first. They have agreed that Eva will carry the baby.

Eva would prefer to go to a licensed clinic for fertility treatment where they can use sperm from an anonymous donor and have everything formalised. Norma is more relaxed. She wants to save money and time and just get her good friend, Robert, to give them some of his instead.

Provide Norma and Eva with legal their options with reference to statute and case law.

Question 4

Harry wants to set up five separate trusts. He has identified the purposes of the five trusts as follows:

Trust 1 - "for such purposes as my trustees see fit"

Trust 2 - "for the promotion and maintenance of such educational work that my trustees may select"

Trust 3 - a charitable trust for "religious purposes"

Trust 4 - "for the establishment of a 9ft solid gold statute of myself to be erected outside the Craiglockhart campus"

Trust 5 - "to fund projects for the benefit of Edinburgh Napier University law students which promote free thought"

Harry wants to appoint Johnny who lives in Havana, Martha who has recently been declared bankrupt, and Glasgow Free Thinking Society Ltd, as trustees for all five trusts.

What advice would you give Harry?

Question 5

Explain the following:

- a. the difference between an *inter vivos* trust and a mortis causa trust;
- b. the difference between a public trust and a private trust;
- c. the difference between a charitable trust and a non-charitable trust; and
- d. the dual patrimony theory.

Question 6

Agnes was married twice; first to William, who died in 1990; then to Xavier, who died in 2007. By William she had two children: Cilla and Holly. Cilla died in 2005, survived by her husband Vernon and their three children, Eva, Fiona and Georgina. Agnes' second husband Xavier had also been married before, to Samantha. Xavier and Samantha had one child, Tanya, who has a civil partner, Roxana. Xavier and Agnes had two children, Mork and Mindy. Agnes died on 1 April 2018; Holly on 2 April 2018; and Tanya on 3 April 2018. Each is intestate. There are no spouses or relatives except as mentioned. Everyone not stated as being dead is alive.

(a) How will Agnes' estate be distributed? **and**

(b) How will Holly's estate be distributed?

Question 7

Discuss critically the difference between the legal rights available to the spouse or civil partner of a deceased person and the rights available to a cohabitant.

END OF PAPER