THE LAW SOCIETY OF SCOTLAND
QUALIFIED LAWYERS ASSESSMENT

TRUSTS AND SUCCESSION

10 May 2022
1030 – 1200
(90 minutes)

Candidates are required to answer TWO out of three questions.
Question 1

To what extent does a cohabitant have an entitlement to claim on an estate in Scotland? Explain the rights or claims a cohabitant might have in both intestate and testate situations, noting how these would be affected by the existence of a surviving spouse and/or children of the deceased.

Question 2

Joe Mangle, domiciled in Scotland and aged 72, died testate on 7th April 2022. He had made a valid will dated 1st April 2017. The sole beneficiary in his will was his friend Paul Robinson, except for a bequest of his car to his friend, Susan Kennedy.

Paul is alive, but you discover the following matters have occurred:

a) When he made the will, Joe was single. However, he married Melanie on 1st December 2020. The will makes no provision for Melanie, who has survived him.

b) Joe stored the original will in a safe at his solicitor’s firm. However, he kept a copy at home. On this copy, there is writing in Joe’s handwriting stating “I do not wish to leave anything to Susan”, and this is signed but not dated. On the copy deed he has scored out the legacy of the car.

c) There is a letter written by Joe to his solicitor saying, “Please give my friend Harold Bishop my quad bike” and the letter is signed but not dated, and not posted.

As an answer to this question set out and critically examine the law relative to the revocation of wills in Scots law. Cite authority throughout.
Question 3

New client, Scott Walter, seeks your advice regarding a trust he is involved with. He is a trustee of the Waverley Family Trust. The other trustees are the settlor, Muriel Shepherd, Lewis Hogg and an accountant, Anita Dhir. Muriel set up the trust in 2011 for the benefit of her children and grandchildren. The trust assets comprise a house on Skye worth £400,000 and an investment portfolio worth £170,000.

Advise the trustees on the following issues, citing relevant authority:

a) The trustees have been considering selling the property on Skye. Scott says he would be interested in purchasing it for his retirement and is willing to pay market value.

b) Anita prepares the accounts for the trust. Scott is concerned that her fees this year are excessive.

c) Lewis is going to be living abroad for a year, because his civil partner has a temporary secondment in the Netherlands.

d) Sadly, Muriel has confided in Scott that she has been diagnosed with mild cognitive decline. She has suggested that her son, Ian Rebus, might replace her as trustee. Andrew is aware that Ian was in trouble a few years ago and has convictions for joyriding and related driving offences. He is also a beneficiary of the trust.

END OF QUESTION PAPER