THE LAW SOCIETY OF SCOTLAND
EXAMINATIONS

FAMILY LAW

Tuesday 27 July 2021

1300 – 1600
(Three Hours)

Candidates should attempt THREE questions.

Each question is worth 100 marks.
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Question 1

Jessica and Mia were married in July 2018. They want to have a baby and are not yet agreed as to how best to do this. Jessica thinks it would be sensible to use a licensed clinic for fertility treatment, even perhaps employing the services of a surrogate. Mia, however, is keen to avoid unnecessary expense and the formalities that would follow upon involving a clinic. She suggests that they simply ask their good friend, Paul (who has always wanted a child of his own), to donate some of his sperm and that either she or Jessica carries their own child. Mia is trying to persuade Jessica that as long as everyone involved agrees a way forward at the outset, then nothing can go wrong. However, when Jessica explains to Mia how anxious she is feeling about the whole situation, Mia agrees to meet with a lawyer in order to obtain legal information and advice.

Imagine you are the Family lawyer meeting with Jessica and Mia. Outline the legal framework governing who the law recognises as a child’s parent(s) and provide advice to both of them on their options.

Question 2

Outline and explain the statutory provisions made in Scottish Family Law for children in need of urgent and short-term state intervention in their lives.
Question 3

Ritchie, a librarian, and Fiona, an academic, were married on 20 July 2010. They separated on 20 July 2020. Throughout their marriage they lived in Edinburgh with their two children, Suzie (aged 8) and Max (aged 5). Their financial circumstances are as follows:

- Title to the family home at 12(a) Barony Place is in Ritchie’s name.
- Number 12(a) Barony Place was valued at £400,000 in 2014 but was only worth £325,000 on 20 July 2020.
- Ritchie has paid into a pension policy since 2005. At 20 July 2020, his pension was worth £150,000.
- Ritchie sold his flat in Edinburgh 4 months before the couple were married. The profit, £20,000, was used as a down-payment on the family home at 12(a) Barony Place.
- Fiona began to work part-time after Max was born, and she stopped paying into a pension policy at that time. She also lost out on several opportunities for promotion.
- In 2014, Fiona inherited £35,000 from her grandmother. While most of this money has remained in a bank account in her sole name, some of it was used to pay for an extension to the family home.

Imagine you are the solicitor advising Ritchie:

a) Outline the key sections of the Family Law (Scotland) Act 1985 regulating financial provision on divorce and dissolution. (50 marks)

b) Explain, with reference to statute and case law, which of the above assets are likely to be considered matrimonial property by the court. (50 marks)

Question 4

Explain, with reference both to statutory provisions and relevant case law, how section 11 of the Children (Scotland) Act 1995 makes provision for resolving disputes between private individuals about the care and upbringing of children.
Question 5

Outline and explain the statutory grounds for seeking divorce and dissolution in Scotland.

Question 6

Helen and Paul are not married to each other. They cohabited for 15 years but separated 6 months ago when Paul moved out of the family home. They have three children, Matthew (aged 12), Ruby (aged 9) and Charlie (aged 4). Shortly after their separation, Helen and Paul agreed childcare arrangements, whereby the children continued to live with Helen and had contact twice a week with Paul. The children enjoyed this contact.

However, 2 months ago, Helen and Paul had a huge argument which was witnessed by the children. At the end of the argument, Paul punched Helen in the face. She reported this to the police and stopped all contact between the children and Paul. She told Paul that, since he has been abusive to her, he has lost his ‘parental rights’ forever. Paul believes that he shares equal rights with Helen. He knows that he is named as father on Ruby’s and Charlie’s birth certificates, but he thinks that he might not be named as father on Matthew’s birth certificate. Paul has not now seen the children for 2 months. Helen reports that she is very distressed about the increasingly aggressive text and email messages that Paul is sending to her asking to see the children.

Imagine you are the solicitor advising Helen:

(a) Explain, with reference to statute, what parental responsibilities and rights are, and who holds them in respect of Matthew, Ruby and Charlie. (50 marks)

(b) What advice would you give to Helen as to how a Scottish court might approach and resolve this dispute in the event Paul raises proceedings seeking contact with the children. Refer to statute and case law in your answer. (50 marks)

END OF QUESTION PAPER