

**THE LAW SOCIETY OF SCOTLAND
EXAMINATIONS**

FAMILY LAW

Tuesday 8 February 2022

**1300 – 1600
(Three Hours)**

Candidates should attempt THREE questions.

Each question is worth 100 marks.

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Question 1

To what extent do the Matrimonial Homes (Family Protection) (Scotland) Act 1981 and the Domestic Abuse (Scotland) Act 2018 provide effective protection and remedies for those in abusive relationships?

Question 2

Brian and Thomas were married on 10 October 2016. In 2018 they adopted their baby daughter, Mia. Brian and Thomas separated on 10 October 2021. Throughout their marriage they lived in Glasgow. Their financial circumstances are as follows:

- Thomas sold his flat a few months before the couple were married so that the profit from the sale (£35,000) could be used as a down-payment on their new family home at 4 West End Terrace.
- Title to their home at 4 West End Terrace is in Brian's name.
- The value of number 4 West End Terrace was £250,000 on 10 October 2021, but the property had increased in value to £350,000 by 10 January 2021, which was the date on which Thomas first sought legal advice about divorce. The property is expected to continue to increase in value.
- Brian and Thomas each have a pension policy, but Thomas' pension is worth significantly more than Brian's because Brian has taken a career break since 2018 so that he can be Mia's primary carer. Thomas has paid into his pension since 2010 and on 10 October 2021, his pension was worth £200,000.
- In 2017, Thomas inherited several antique rugs from his great aunt. He retained only one of the rugs. He sold the other rugs, using the money from the sale to pay for a family holiday abroad.
- In 2020, Brian bought shares in a local company and the company performed very well on the stock market throughout 2021. Thomas does

not know exactly what the shares are worth, but he would estimate their value at around £20,000.

Imagine you are the solicitor providing written advice to Thomas:

- 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 3

Aisha and Euan are divorcing. They have been married for 20 years and have two children, Olive (age 13) and Jamie (age 8). Throughout their relationship, Euan was the primary carer for the children. He works part-time as a librarian. Aisha works full-time as a school head teacher.

Euan moved out of the jointly owned family home immediately after he and Aisha agreed to separate. The children have remained with Aisha in the family home. Euan's rental accommodation is only a short distance from the family home and, until last week, the children came to stay with him every other weekend and overnight each Wednesday.

Last week, Euan discovered that Aisha's new boyfriend, Rick, had moved into the family home. He challenged Aisha about this, and she said in response that the children didn't want to see Euan any more. She told him that, since she is the mother of Olive and Jamie, she is the only person with the right to make decisions about them. Aisha then went on to say that 'no court in the land' could force her to allow her children to see Euan.

Imagine you are the solicitor advising Euan:

- (a) Explain, with reference to statute, what parental responsibilities and rights are, and who holds them in respect of Olive and Jamie.
(30 marks)
- (b) What advice would you give to Euan as to how a Scottish court might approach and resolve this dispute in the event that Euan raises proceedings seeking contact with the children. Refer to statute and case law in your answer.
(70 marks)

Question 4

Outline and explain, with reference to relevant statutory provisions and case law, the financial orders that may be sought by an ex-cohabitant following the breakdown of their relationship.

Question 5

Molly and Mike Macdonald are a married couple living in Aberdeen. They have two children, Fiona, age 12, and Simon, age 6. Fiona was conceived traditionally, but by the time the Molly and Mike wanted to have their second child, both were experiencing problems with fertility. Simon was therefore conceived using sperm from a donor and through surrogacy.

Outline the legal framework governing who will be recognised in law as a child's parent in the case of a child born (a) as a result of traditional conception and (b) as a result of assisted reproduction.

Question 6

Outline and explain the principles governing the making of permanence orders and adoption orders in terms of the Adoption and Children (Scotland) Act 2007. Refer to relevant statutory provisions and case law in your answer.

END OF QUESTION PAPER