

**THE LAW SOCIETY OF SCOTLAND
EXAMINATIONS**

TRUSTS AND SUCCESSION

Monday 25 July 2022

**0930 – 1230
(Three hours)**

**Candidates MUST answer the question in Part A and
TWO questions in Part B.**

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SECTION A

Question 1

INTESTATE SUCCESSION

Ken Mattel died in a rollerblading accident on 3rd June 2022. He was domiciled in Scotland and died intestate. He was survived by his wife, Barbara Mattel. At the time of his death, it was not thought that there were any children, and he was not survived by parents, brothers, or sisters. Barbara, however, had a daughter from an earlier relationship, Cindy, who lived with Ken and Barbara. When he died, Ken's estate included the following things: -

- His half-share of the townhouse he lived in with Barbara. There is a survivorship provision in the title in favour of Barbara
- A holiday cottage named "Malibu" in his sole name
- Furniture and personal possessions in both houses
- A motor car
- Some bank accounts and investments

Note that valuations have not been provided and instead you are expected to focus on the principles behind the manner of distribution.

- i) Advise Barbara about her entitlement to succeed to Ken's estate.
- ii) Would your answer be different if it was discovered that, unknown to the family, Ken had a son, Joe, from a previous relationship?
- iii) Would your answers to the above questions be different if Ken and Barbara were not married but cohabited together? Explain the differences.

END OF SECTION A

SECTION B

Question 2

Bridget Newman died in May 2022. She owned a house jointly with her wife Katrina and there is a survivorship clause in the title. The house is located in Dumfries and is worth, in total, £500,000. It was free of debt. She has left a will dated 2016 comprising a number of bequests expressed as follows:

- a) "I wish my son Magnus to inherit my piano". At the time of her death, Bridget owned a grand piano. Magnus however died in 2020 leaving a young daughter, Hannah. Hannah is still alive and is now five years old.
- b) "I want my daughter Laura to inherit my Tesla car". Bridget crashed the car in March 2022 and it was a write off. She received £10,000 as an insurance pay out for the car and had not got around to buying a new car.
- c) "I want my grandson to inherit my books". In fact, Bridget's only grandchild is her granddaughter, Hannah.
- d) "£10,000 is to go to the upkeep of my pet dog, Kasper". Kasper is 15 years old and in poor health.
- e) "The residue of my estate is to go to my husband Philip." Bridget and Philip divorced in 2018, and she married Katrina in 2020.

Consider the validity of these provisions and identify the parties who are entitled to be beneficiaries of Bridget's estate. Make reference to appropriate authority in your answer.

Question 3

With reference to appropriate authority, outline and comment critically upon the methods of retiral, appointment and removal of a trustee in a Scottish trust.

Question 4

Compare and contrast the extent, basis and application of the following doctrines insofar as they relate to the essential validity of a will in Scots law:- (a) Insanity of the testator; (b) Facility and circumvention; and (c) Undue influence. Make reference to appropriate authority in your answer.

Question 5

Guneet Khan, a trustee of a charity called GreenJog seeks your advice. GreenJog is a charity which organises weekly jogs in green spaces around Scotland. As part of their fundraising to cover the costs of the organisation, the charity has various sponsors. One of these is a leisure wear company, Dontra. Dontra produces and sells GreenJog branded products, and GreenJog receives a small percentage of the profits on the products sold.

Guneet has recently discovered that one of her fellow trustees, Rick Carson, received commission from Dontra when the clothing line was set up. This was not disclosed to his fellow trustees, and they did not approve him receiving the commission.

Explain, with reference to relevant case law and statutory provision, the legal issues arising from the facts above. What remedies are available to the trustees?

Question 6

Among the duties of a trustee are duties to invest. Explain, with reference to relevant case law and statutory provision, the investment duties of a trustee and explain if and how a trustee can vary any standard investment duties.

END OF SECTION B

END OF QUESTION PAPER