

**THE LAW SOCIETY OF SCOTLAND  
EXAMINATIONS**

**TRUSTS AND SUCCESSION**

**Monday 7 February 2022**

**0930 – 1230  
(Three hours)**

**Candidates MUST answer the question in Part A and  
TWO questions in Part B. Candidates may make use of  
any un-annotated statutory material.**

**LAW SOCIETY OF SCOTLAND  
EXAMINATIONS**

**TRUSTS AND SUCCESSION**

**Monday 7 February 2022  
(Three hours)**

---

**Candidates MUST answer the question in Part A and TWO questions in Part B.  
Candidates may make use of any un-annotated statutory material.**

**SECTION A**

**Question 1**

**INTESTATE SUCCESSION**

Logan Ray died intestate, domiciled in Scotland, on 1 January 2022, survived by his wife Maria Ray and four children.

His surviving spouse, Maria, seeks your advice on what she will be entitled to from Logan's estate. Maria owns half of the family home and there is no survivorship provision in the title.

Would Marcia's entitlement be different if she and Logan had separated and she had moved out of the house two years ago, and Logan's girlfriend Kerri was had been living there with him until he died?

In your answer you should make reference to prior rights, legal rights, free estate and any discretionary provision.

**END OF SECTION A**

## **SECTION B**

### **Question 2**

Patricia Lines, domiciled in Scotland, died at the age of 89 on 21st December 2021 leaving a short document that may or may not be a will. It is a single sheet ripped out of a lined note pad. You are asked to comment on the validity of the will and as to how confirmation may be obtained as it appears to have some oddities in relation to formal validity and identification of beneficiaries.

The document consists of one page written in Patricia's handwriting and contains the following wording. "Janey, please take everything you want. I wish you a wonderful life". The paper is then signed. There are no witnesses. Then, underneath the signature there is P.S. "Let Mark have my piano". There is no further subscription. There is no express nomination of an executor.

You have checked and, so far as can be ascertained, there are no other testamentary documents except that Patricia owned a house along with her sister Jane Margaret Anderson and it is owned 50/50 with a survivorship destination contained therein. Patricia has a nephew called Mark.

In this context answer the following questions:

- a) Is this single page document a formally valid will?
- b) How are the beneficiaries identified and who are they?
- c) Who is entitled to be executor and what is the process for appointment?

Make reference to appropriate authority in your answer.

### **Question 3**

Compare and contrast the effect of the doctrines of (a) ademption (b) abatement and (c) *legatum rei alienae* as they operate in respect of a will that purports to make a bequest of an item not owned by the testator.

### **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**

In 2018, Katie Kirk created the Walking Tennis Trust, a trust intended to promote participation in an inclusive form of sporting activity. She appointed herself as trustee along with Lisa Love, Michael Mackie, and Neil Nelson. The trust deed is very basic and does not cover assumption or resignation of trustees and it does not say anything about the duties of the trustees.

Various issues arise and your advice is sought. Advise the trustees on the following, making reference to appropriate authority:

- a) Michael had a heated argument with Neil and Lisa during a Zoom meeting in the summer, and Katie ended up muting him. Michael sent a couple of private messages to Neil, with lots of profanities and personal threats, and including the words “I’ve had enough”, which Neil saved as a screenshot. Michael now refuses to attend meetings. Katie believes that, as settlor she retains the power to appoint a new trustee to replace Michael. Advise the trustees on the validity of Michael’s resignation and the correct procedure for replacing him.
- b) Lisa was involved in a car accident in November. Unfortunately, she has a serious brain injury and is unlikely to regain full capacity. What measures could the remaining trustees take to manage the situation?
- c) Neil has been offered a new job in The Netherlands, but he is keen to remain a trustee despite the move. Is this possible?

### **Question 6**

With reference to appropriate authority, examine critically the doctrine of conflict of interest and how a trustee may be found liable for such.

**END OF SECTION B**

**END OF QUESTION PAPER**