

**THE LAW SOCIETY OF SCOTLAND
EXAMINATIONS**

TRUSTS AND SUCCESSION

Monday 6 February 2023

**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.**

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SECTION A

Question 1

INTESTATE SUCCESSION

James Keiller died intestate, domiciled in Scotland, on 1 January 2023, survived by his wife Clementine. James and Clementine had separated in 2018, but not divorced. James had a new partner, Jada Marley, who had been living with him from April 2019 until his death.

James was also survived by three grown-up children, Anna, Bjorn and Benny. He had another daughter, Agnetha, who died ten years ago. Agnetha's children, Linda and Peter survived her, and are both still alive.

James' estate includes a half share in the family home in Broughty Ferry. Clementine owns the other half share, but moved to rented accommodation when the couple separated and subsequently moved in with a new partner. There is no survivorship provision in the title. The house is worth £600,000 in total. James' other assets consisted of his car worth £30,000 and investments worth £300,000.

How would James' estate be divided? In your answer you should make reference to prior rights, legal rights, free estate and any discretionary provision, but ignore any tax implications.

END OF SECTION A

SECTION B

Question 2

Joe Mangle, domiciled in Scotland and aged 72, died testate on 22nd December 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 and Susan are alive, but you discover the following matters have occurred:

- a) When he made the will, Joe was single. However he has been in a relationship with Melanie Pearson since July 2017. The couple lived together since January 2018, and were engaged but not married. The will makes no provision for Melanie, who has survived him.
- b) Joe stored the original will in a safe at his solicitors 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 and was dated 20 August 2019, but was not in fact posted to his solicitor.

Explain the principles of interpretation of wills in Scots law, and how the facts above affect the distribution of Joe's estate. Cite authority throughout.

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

New client, Catherine Cawood, seeks your advice regarding a trust she is involved with. She is a trustee of the Hebdon Family Trust. The other trustees are the settlor, Nevison Gallagher, Mike Taylor and an accountant, Kevin Weatherill. Nevison set up the trust in 2011 for the benefit of his children and grandchildren. The trust assets comprise a house on Arran worth £200,000 and an investment portfolio worth £270,000.

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

- a) The trustees have been considering selling the property on Arran. Catherine says she would be interested in purchasing it for her retirement and is willing to pay market value.
- b) Kevin prepares the accounts for the trust. Mike is concerned that his fees this year are excessive.
- c) Mike is going to be living abroad for a year, because his civil partner has a temporary secondment in the Netherlands.
- d) Sadly, Nevison has confided in Catherine that he has been diagnosed with mild cognitive decline. He has suggested that his daughter, Ann Gallagher, might replace him as trustee. Ann is also a beneficiary of the trust, and so are her children.

Question 6

Outline and analyse the doctrine of conflict of interest and its consequences as it applies to the actings of a trustee in a Scottish trust, including remedies which may be available.

END OF SECTION B

END OF QUESTION PAPER