

Trusts & Succession

Tuesday 5 November 2024

12pm to 1.30pm

Candidates are required to answer TWO out of three questions.

Question 1

To what extent does a cohabitant have a claim on an estate in Scotland?

Explain the rights or claims a cohabitant might have in both intestate and testate situations, noting how these would be affected by the existence of a surviving spouse and/or children of the deceased. Your answer should explain the law applicable on 1st November 2024.

Question 2

Alex Smith died intestate. At the time of his death, he was in a civil partnership with Boris, but the couple were separated. They had not got around to arranging a dissolution or formalising their separation. Boris moved out of the house three years ago, and into rented accommodation. Alex had no children. Boris has several children from various relationships. Alex is also survived by his younger sister, Nicola. Alex owned his house worth £700,000 in his sole name, with no outstanding mortgage and no survivorship provision in the title. He also left £39,000 worth of furniture, £289,000 in cash and £60,000 in shares.

- a) If Alex died on 1st April 2024, how would his estate be divided?
- b) If Alex died on 1st November 2024, how would his estate be divided?

Your answer should ignore any inheritance tax implications, and must make reference to appropriate authority.

Question 3

New client, Jack Shepherd, seeks your advice regarding a trust he is involved with. He is a trustee of the Park Family Trust. The other trustees are the settlor, David Carter, Diana Tait and an accountant, Catherine Stark. David Carter set up the trust in 2016 for the benefit of his children and grandchildren. The trust assets comprise a house in Ayrshire worth £600,000 and an investment portfolio worth £550,000.

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

- a) The trustees have been considering selling the property in Ayrshire. Diana says she would be interested in purchasing it for her retirement and is willing to pay market value.
- b) Catherine suggests that the trustees should sell some of the current investments and invest £200,000 in her son's new Artificial Intelligence business, a "sure bet".
- c) Jack is going to be living abroad for a year, because his girlfriend has a temporary secondment in New Zealand.

d) Sadly, David has confided in Jack that he has been diagnosed with mild cognitive decline. He has suggested that his grandson, River, might replace him as trustee. Jack is aware that River was in trouble with the police a few years ago and has convictions for joyriding and related driving offences. He is also a beneficiary of the trust.

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