

Trusts and Succession

Monday 17 February 2025

09.30 – 12.30

(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

Anya died intestate on 31 March 2024. At the time of her death, she was married to Boris but the couple were separated. They had not got around to arranging a divorce nor formalising their separation. Boris moved out of the house four years ago, and into rented accommodation.

Anya had no children. She is survived by her elderly parents, Caroline and David, and her twin brothers, Elon and Fred. Anya owned a house worth £500,000 in her sole name and with no outstanding mortgage, furniture worth £35,000, £200,000 cash in a bank account and £65,000 in shares.

How would Anya's estate be distributed? Would this distribution have been different if Anya had died after 30 April 2024?

Your answer should make reference to appropriate authority. (Ignore any inheritance tax liability.)

END OF SECTION A

SECTION B

Question 2

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 3

Diana comes to see you for advice following the death of her husband, Jackson, who died in December 2024. Jackson and Diana had two children together, River and Roddy.

The couple had separated five years ago, when Jackson had an affair with Emma, but the couple had not got round to getting a divorce. Jackson moved into Emma's house and had lived there ever since. Emma's son from a previous relationship, Sid, lives there too, and called Jackson "Dad".

Diana stayed in the family home in Aberdeen with the children, even though the title to the house was in Jackson's sole name, with no survivorship provision in the title. It is currently worth £400,000.

The furniture in the family home is worth £60,000, owned equally by Jackson and Diana.

Jackson had further assets in a share portfolio, ISAs and bank accounts which total £900,000.

Jackson made a will last year, which leaves the family home in Aberdeen to Diana. The will directs that everything else passes to Emma.

Advise Diana on her potential claim to Jackson's estate, and the legal rights of her children. Make reference to appropriate authority in your answer. (Ignore any inheritance tax issues.)

Question 4

Andrew Scott seeks your advice regarding a trust he is involved with. He is a trustee of the Potter Family Trust. The other trustees are the settlor, Caroline Potter, Chris Davies and another firm's trustee company. Caroline set up the trust in 2011 for the benefit of her children and descendants. The trust assets comprise a house on Skye worth £400,000 and an investment portfolio worth £170,000.

Andrew tells you that the trustees have been considering selling the property on Skye, and he would be interested in purchasing it for his retirement and is willing to pay market value. Explain any issues arising relating to the potential purchase, and what would the consequence be if he proceeds to purchase the property.

Chris is an accountant and prepares the accounts for the trust. Andrew is concerned that his fees this year are excessive. What are the rules regarding remuneration of trustees, and how might trustees determine whether the fees are appropriate?

Sadly Caroline has confided in Andrew that she has been diagnosed with mild cognitive decline. She has suggested that her son, Max, might replace her as trustee. Andrew is aware that Max was in trouble a few years ago and has convictions for joyriding and related driving offences. He is also a beneficiary of the trust. Would either of these issues prevent him from becoming a trustee?

Question 5

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

Your answer should include the changes in the Trusts and Succession (Scotland) Act 2024, whether currently in force or not.

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. What advice would you give to trustees when considering how to invest trust funds, to ensure they comply with their fiduciary duties? What consequences might there be if they fail to comply with the standard of care expected of them?

END OF SECTION B

END OF PAPER