

Family Law

Tuesday 18 February 2025

13.00 – 16.00

(three hours)

Candidates should attempt THREE questions.

Each question is worth 100 marks.

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Candidates should refer to statutory provisions and case law in all answers.

Question 1

John and David have been together since 2012, and they were married in 2020. They have two children, Anna (born 2018) and Jessica (born 2021), both born via surrogate. David is infertile and the children were conceived using John's sperm. David's best friend, Chen, tells John and David that he thinks that David will not be recognised in law as the parent of Anna and Jessica. John and David begin to worry about legal recognition for David. Another friend suggests that the couple ask a family lawyer the answer.

John and David ask you for legal advice. Outline and explain the legal framework governing who will be recognised in law as the parent(s) of Anna and Jessica.

Question 2

What financial orders can be sought by an ex-cohabitant following the breakdown of their relationship? Discuss the relevant sections of the Family Law (Scotland) Act 2006 and the related case law in your answer.

Question 3

Amir and Farah ('the parties') were married on 7 December 2012, and they separated on 7 December 2024. They have one child, Bilal, aged 7. During their twelve-year marriage, they lived at 22 Prince Lane, a five-bedroom mews cottage in the West End of Glasgow. This property is the matrimonial home. Title to the matrimonial home is held in Amir's sole name. Farah is a part-time lecturer, employed by the University of Glasgow. She has worked part-time since the birth of Bilal. Amir is a heart surgeon. He has worked full-time since 2008.

At the date of separation (7 December 2024) the parties' financial circumstances were as follows:

- No. 22 Prince Lane was valued at £730,000 on 7 December 2024. However, by 6 February 2025, the property was estimated by an independent valuer to have decreased in value to £680,000. This property is not burdened with a mortgage.
- Amir owns a small flat in London, where he stays when he is engaged in consultancy work there twice a month. The flat, which was purchased in 2010, is worth £800,000 and is burdened with a mortgage of £400,000.
- Farah owns three flats in Glasgow West End, which she rents out to students. The flats are worth a total of £500,000, after the mortgage for each flat has been deducted. The flats were all purchased between 2015 and 2020 using money Farah inherited from her late aunt.

- Amir has two pension policies, one with the NHS and one private policy. Together, these are valued at £450,000. Amir began paying into both pension policies in 2008. Farah has a small pension with the University, valued at £65,000, which she began paying into in 2014.
- Amir bought a Mercedes sports car in 2021. This was valued at £150,000. Part of the purchase price (£50,000) was a birthday gift from his father.
- The parties set up a savings account for Bilal on his birth, contributing to it each month. The balance of this account is £30,000. The parties are agreed that this account belongs to Bilal, not them.

Advise the parties on the key sections in the Family Law (Scotland) Act 1985 governing financial provision on divorce. In your answer (i) confirm which assets are matrimonial property, explaining why this is the case, and (ii) outline and explain the relevance of the Section 9 principles of the 1985 Act.

Question 4

With reference to the Adoption and Children (Scotland) Act 2007 and relevant case law explain how Scottish courts decide whether to grant permanence orders and adoption orders.

Question 5

Josh and Sarah recently separated after having lived together as partners for 16 years. They never married. They have three children, Lewis (age 14), Lois (age 11) and Lara (age 8). During their relationship, Josh and Sarah both worked full-time and contributed equally to the children's care and upbringing. Sarah moved out of the family home on Boxing Day 2024, and the children have remained in the family home with Josh since that date. Sarah now lives five miles away with her new partner Euan and his son (Ozzie, age 3) from his previous marriage.

Lewis, Lois and Lara love both of their parents very much. During January 2025, the three children had residential contact with Sarah every weekend and Sarah took them out for dinner on Wednesday evenings. However, following a serious physical altercation on 8 February 2025, after which Sarah required medical attention and both Josh and Euan were arrested, relations between the adults broke down entirely. Josh is now refusing to allow Sarah to see the children. He has told her that he is the residential parent and holds all parental rights in respect of the children.

Sarah is fearful of Josh's temper. His aggression towards her was one of the reasons she ended their relationship. Sarah is desperate to see her children again but does not know how to proceed. She makes an appointment with you for legal advice.

Explain, with reference both to statutory provisions and relevant case law, how a court would apply the provisions of section 11 of the Children (Scotland) Act 1995 in resolving the dispute about the care and upbringing of Lewis, Lois and Lara.

Question 6

With reference to statute and case law, outline and explain the grounds of divorce and dissolution in Scotland.

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