

**LAW SOCIETY OF SCOTLAND
EXAMINATIONS**

TRUSTS AND SUCCESSION

Monday 12 February 2024

**0930 – 1230
(Three hours)**

**Candidates MUST answer the question in Part A and TWO
questions in Part B.**

Candidates **MUST** answer the question in Part A and **TWO** questions in Part B.

SECTION A

INTESTATE SUCCESSION

Bella Baxter, an acclaimed surgeon, died on 1 January 2024. She is survived by her husband, Alfred, but they were estranged and had been living apart for 10 years. She had a new partner, Max, who had been living with her since 2017. They were engaged but not married. Bella and Max adopted a child, Felicity, who is now aged 17.

When she died, Bella had been in the process of making a will but had never finalised it, as she kept changing her mind about finer details. She had told various people that she would not want Alfred to receive anything, but had not committed this wish to writing. Bella's estate consists of a large house near Kelvingrove, Glasgow, which she had inherited from her father two years ago, and where Max resided with her. She also had a large investment portfolio worth over £1 million, a small holiday flat in Lisbon, Portugal, the usual assortment of furniture and personal belongings, and a collection of exotic animals.

Explain the legal entitlements and potential claims of Alfred, Max and Felicity. Note that precise valuations have not been provided and instead you are expected to explain the principles behind the distribution, citing appropriate authority.

END OF SECTION A

SECTION B

Question 2

Jackson Lamb died in December 2023, leaving a house in Aberdeen worth £400,000 in his sole name, and without a mortgage, and cash savings of £150,000. In his will, dated 2022, his moveable estate is left entirely to his partner, Catherine. The will directed that his house is to be sold and the proceeds shared equally between Catherine and “West Renfrewshire Library”. It turns out that there is no such library in existence.

Jackson’s wife, Diana, moved out of the house ten years ago and lives with her new partner, Ingrid. Jackson and Diana did not obtain a divorce or judicial separation. Their son, River, is in his twenties and lived with Jackson.

Diana and River are both upset about being overlooked. The library manager at Port Glasgow Library in the West of Renfrewshire has also become aware of the contents of the will.

Assuming that Jackson had capacity when he made his will, and it was validly executed, what claims may be made? 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

In 2022, 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. It is not a registered charity.

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 5

Guneet Khan, one of the trustees of a charity called GreenJog, seeks your advice. GreenJog is a registered Scottish charity which organises weekly jogs in green spaces around Scotland. As part of their fundraising to cover the costs of the organisation, the charity has various sponsors. One of these is a leisure wear company, Dontra. Dontra produces and sells GreenJog branded products, and GreenJog receives a small percentage of the profits on the products sold.

Guneet has recently discovered that one of her fellow trustees, Rick Carson, received commission from Dontra when the clothing line was set up. This was not disclosed to his fellow trustees, and they did not approve him receiving the commission.

Explain the legal issues arising from the facts above. In particular, you should advise the trustees on their liability for acts of their fellow trustee, suitable remedies they might seek, and reporting obligations they have as charity trustees.

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 QUESTION PAPER