

Trusts and Succession

Monday 22 July 2024

09.30 – 12.30

(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

Question 1

INTESTATE SUCCESSION

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

Amelie had no children. She is survived by her elderly parents, Carmen and Derek, and her sister Eilish. Amelie owned a house worth £400,000 in her sole name and with no outstanding mortgage, furniture worth £35,000, £100,000 cash in a bank account and £65,000 in shares.

How would Amelie's estate be distributed? Would this distribution have been different if Amelie 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

Kirsty comes to see you for advice following the death of her husband, Phil, who had a tragic accident when he fell down an immaculately polished marble staircase.

Phil had separated from Kirsty five years ago, when he started a relationship with Carol. He had since been living with Carol and Carol's son, Andy. They lived in a house in the desirable location of Bearsden, worth £300,000 and in Phil's sole name. The furniture in Bearsden is worth £30,000, all owned by Phil.

Phil and Kirsty had two children together, Sarah and Lawrence. When they split up, Kirsty stayed with Sarah and Lawrence in the family home in Broughty Ferry, worth £320,000, and in the couple's joint names (but no survivorship provision in the title). The furniture in the property is worth £60,000 and owned equally by Phil and Kirsty.

Phil had further assets in a share portfolio, ISAs and bank accounts which total £300,000.

Phil's will leaves his share of the Broughty Ferry house to Kirsty, but everything else to Carol. Advise Kirsty on her potential claim on Phil's estate, and the legal rights of her children.

Make reference to appropriate authority in your answer. (Ignore any inheritance tax issues.)

Question 3

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 4

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

Question 5

Sanjeev Kumar seeks your advice regarding a trust he is involved with. He is a trustee of the Featherington Family Trust. The other trustees are the settlor, Penny Featherington, Aria Cooper and Agatha Daniels. Penny set up the trust in 2014 for the benefit of her children and descendants.

The trust assets comprise a house in Oban worth £400,000 and an investment portfolio worth £250,000.

- a) Sanjeev tells you that the trustees have been considering selling the property in Oban, 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.
- b) Agatha is an accountant and prepares the accounts for the trust. Sanjeev is concerned that her fees this year are excessive. What are the rules regarding remuneration of trustees, and how might trustees determine whether the fees are appropriate?
- c) Sadly, Aria has confided that she has been diagnosed with mild cognitive decline. She has suggested that her daughter, Cressida, might replace her as trustee. Sanjeev is aware that Cressida has convictions for joyriding and driving without insurance. Would this prevent her from becoming a trustee?

Your answers should make reference to appropriate authority.

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.

END OF SECTION B

END OF PAPER