

Trusts & Succession

Tuesday 14th May 2024

12pm to 1.30pm

Candidates are required to answer TWO out of three questions.

Question 1

Amelie died intestate on 1st April 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 or 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 owns a house worth £600,000 in her sole name and with no outstanding mortgage, £40,000 furniture, £189,000 in cash and £60,000 in shares.

How would Amelie's estate be distributed? Your answer should make reference to appropriate authority.

Question 2

Kirsty comes to see you for advice following the death of her husband, Phil, who had a tragic accident on 1st April 2024, when he fell down an immaculately polished marble staircase. Phil had separated from Kirsty five years ago, when he started a relationship with Carol, but Phil and Kirsty did not get divorced.

Phil has since been living with Carol and Carol's son, Andy, in a house in Paisley, worth £300,000 and owned by Phil in his sole name. The house contains furniture worth £60,000, all owned by Phil.

Phil and Kirsty had two children together, Alan and Lawrence. When they split up, Kirsty stayed with the children in the family home in Dundee worth £350,000, and in the couple's joint names. 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 £600,000.

Phil's will, written last year, leaves his share of the house in Dundee to Kirsty, but everything else to Carol. Advise Kirsty on her legal rights, and those of her children, Alan and Lawrence, to make a claim on Phil's estate.

Question 3

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. 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 swearing 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?

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