

EXAMINER'S COMMENTS
SUCCESSION – MARCH 2009

Question 1 Many candidates had difficulty determining whether or not the de facto spouse was entitled in the intestacy. This was due to their inability to determine whether in the circumstances s.61B(3A) or s.61B(3B) PAA was the relevant subsection. The other major difficulty experienced by candidates concerned whether the de facto spouse was entitled to require the administrator to hold the deceased's interest in the shared home for her.

Question 2 Overall, this question was answered satisfactorily. The major difficulties here were in part (a), in which many candidates overlooked the new exception to revocation by marriage in s.12(2) SA, and in part (c) in which most candidates did not appreciate the details of s.6 SA relating to the formal validity of a will.

Question 3 In the first part of this question, most candidates failed to consider whether the niece and cousin had any interest in the outcome to enable them to challenge the validity of the will. In the second part of the question many candidates failed to appreciate that s.10 SA, rather than s.13 of the former WPAA, concerning the interested witness rule and therefore the changes made to the rule by the SA were relevant in the circumstances.

Question 4 Most candidates answered this question reasonably. However, in part (a) many candidates did not appreciate the difference between s.29 of the former WPAA and s.41 SA where a gift to an issue of the testator lapses. Many candidates in part (b) of the question were vague in their explanation of the application of the class closing rules to the gift in question.

Question 5 This question was generally answered satisfactorily. However, candidates' knowledge of the material was often superficial so that they could not answer the question fully. For example, in part (d) very few candidates spoke of the difference between professional and non-professional services, as explained in *Sacks v Gridiger*, a distinction that was material in the question.

Question 6 This question, which concerned family provision, was generally answered satisfactorily, but many candidates continue, notwithstanding the same observation with respect to past examinations, to pay scant attention to the authorities, which explain the legislative requirements and which would provide the necessary content for a good answer.

Question 7 This question was generally satisfactorily answered. The poorer answers failed to discuss whether or not the gift of the ABC shares (which were the subject of a takeover) was adeemed, and failed to appreciate how to deal with the demonstrative legacy in the administration of the estate. Other errors concerned whether or not the statutory order was varied in accordance with the testator's direction in the will, the failure to set aside the class 5 pecuniary legacy fund before paying liabilities when applying the statutory order, and the failure to address at all that part of the question which asked who should obtain the grant and what type of grant should be made.