

EXAMINER'S COMMENTS  
SUCCESSION – SEPTEMBER 2008

**Question 1** Candidates were generally capable of administering an intestate estate, though a number of candidates continue to experience difficulty with the right of election with respect to the shared home. Other common errors included the treatment of the holiday home as an asset in the estate, and the failure to recognise that there was a charge against a household chattel.

**Question 2** Candidates who did poorly in this question generally failed to appreciate the operation and effect of the Succession Act provisions relevant to the question, and in particular the changes made by the Succession Act to the revocation of wills by marriage and the interested witness rule.

**Question 3** Most candidates answered this question reasonably. Poorer answers usually concerned either a failure to appreciate the principal issue (for example, in part (c) a large number of candidates failed to consider whether the letter could amount to a revocation pursuant to the judicial dispensing power) or to explain adequately the issue (for example, that the perversion of the mind in part (d) must affect the disposition in the will).

**Question 4** This question, which concerned the rules of construction of wills introduced by the Succession Act relating to wills made on or after 1 March 2008, was generally answered very well by those candidates who attempted the question.

**Question 5** Many candidates were superficial in their treatment of both parts of this question, and therefore failed to focus sufficiently on the issues raised and to apply the law with precision and clarity. For example, in part (a) many candidates failed to refer to or appreciate the effect of *Sacks v Gridiger*, and in part (b), many candidates seemed to believe that an executor is protected if notice of a claim is given by the claimant after the expiration of the period in the s 92 notice rather than, as is the case, after the distribution of the estate.

**Question 6** Many answers to this question, which concerned family provision, paid scant attention to the authorities which explained the effect of the legislative provisions. This was most significant in the last part of the question in which many candidates failed to appreciate that the relevant prescribed transaction was the omission to sever the joint tenancy and not the creation of the joint tenancy itself.

**Question 7** This question was generally well answered, though some candidates organised their answers poorly, and others, though they could explain the law, had difficulty in applying it to answer the question. A common error on a central issue in the question was whether or not Locke King's Act was displaced by the terms of the will.