

**EXAMINER'S COMMENTS**  
**SUCCESSION – SEPTEMBER 2009**

**Question 1** This questions was generally well answered. The principal difficulties encountered by candidates were explaining whether or why the de facto spouse was entitled in the intestacy, and whether the de facto spouse was entitled to elect to take the deceased's interest in the shared home.

**Question 2** Many of the answers to the first part of this question were superficially answered with little analysis of the facts and application of the law. Likewise, with the second part of the question, particularly with respect to the effect of the revocation of the testator's will as a preliminary to making a new will, which the testator never made.

**Question 3** Overall the question was reasonably answered. In part (a) candidates mostly failed to recognise that the void will would be incorporated by the codicil (*Allen v Maddock*). In part (b) a number of candidates confused the effect of republication on a gift to an interested witness of the will with the statutory exception where there are at least two non-interested witnesses to the gift. In part (c) many candidates were unsure of whether the will was revoked by marriage and overlooked the new exception to revocation by marriage in s. 12(2) SA.

**Question 4** Most candidates answered this question well. However, in part (a) some candidates confused the consequence of a specific and general legacy. In part (b) some candidates did not appreciate the difference between s.29 of the former WPAA and s.41 SA. In part (c) candidates generally overlooked that the new provisions concerning the construction of residuary gifts are subject to a contrary intention.

**Question 5** Many answers to this question were mediocre, usually because candidates failed to adequately explain their answers. For example, in part (c) few candidates spoke of the difference between professional and non-professional services, as explained in *Sacks v Gridger*, a distinction that was material in the question.

**Question 6** This question, which concerned family provision, was generally answered satisfactorily, but many candidates, notwithstanding the same observation with respect to past examinations, failed to use and explain the authorities in the analysis of the problem.

**Question 7** This question was generally satisfactorily answered. The poorer answers inadequately dealt with the gift of the car to the son and whether or not Locke King's Act was displaced.