

EXAMINER'S COMMENTS
SUCCESSION – MARCH 2014

Question 1 was generally answered well. However, a number of candidates failed to find that there was only one surviving spouse, C in the question. A, to whom T was married at his death, failed to survive him by 30 days (s 107 *Succession Act 2006* (NSW)). The other two major points of comment are, firstly, that many candidates neither explained the meaning of “personal effects” nor analyse the assets in question, and secondly, that though C is not entitled to the house, she may elect to acquire it.

Question 2 was generally answered poorly. In part (a) candidates did not focus on the question, which concerned the burden of proof, and in particular that the circumstances may give rise to the suspicions of the court and thereby make it more difficult for the propounder of the will to discharge the prima facie burden for the admission of the will to a grant. A surprising number of candidates also failed to appreciate that the burden of proof lies on a party alleging undue influence. Almost no candidate realised that T's siblings had no interest in the suit: see *Re Devoy* [1943] St R Qd 137. In part (b) most candidates failed to conclude that the only possibility of a revocation of the second will was by a writing (the letter) declaring an intention to revoke with the aid of s 8 *Succession Act 2006* (NSW), and that such revocation does not revive the earlier will.

Question 3 was overall answered well. The poorer answers struggled with the last two parts of the question: when a personal representative may both take a legacy and claim commission; and the necessity for all executors to be party to a contract dealing with the sale of land.

In question 4, on family provision, it appears that most candidates have finally understood that it is necessary also to discuss the law and consequently the answers were generally good, though a number of students did not relate the circumstances of the question to the issues to be determined. Some answers were very scant in discussing that it would be necessary to declare the major asset as notional property if an order for provision were to be made.

Overall question 5 was very well answered. However, a small number of candidates were unsure of whether or not s 145 of the *Conveyancing Act 1919* (NSW) (*Locke King's Act*) and the statutory order were displaced by the terms of the will. Likewise a number of candidates overlooked the application of the new *Succession Act* provisions relating to the construction of wills made on or after 1 March 2008. For example, some candidates applied s 42 of the Act, which concerns residuary dispositions, to the specific gift of shares to the nieces and nephews of the deceased.