

EXAMINER'S COMMENTS
SUCCESSION – SEPTEMBER 2013

Question 1 was in general answered reasonably. However, many candidates failed to see that in the first part of the question there were two surviving spouses. In the second part of the question many candidates failed to see that s. 107(2) of the *Succession Act 2006* (NSW) would be applicable if the intestate died without spouse and issue. Even where it was applied many applied it incorrectly and gave the estate to the cousin's children. Further, many candidates gave scant explanation of the relevant statutory provisions.

Question 2 was also answered reasonably by most candidates. However, in part (a) of the question, candidates were light on the explanation of how the court determines whether the proposed will "is, or is reasonably likely to be, one that would have been made by the person if he or she had testamentary capacity."

Question 3 was answered poorly. Like the last examination, this is surprising as each part of the question concerned basic aspects of probate practice that are invariably examined: the protection of the legal personal representative from the debts of the deceased, in relation to which most candidates failed to read the question and spoke about s. 93 of the *Succession Act 2006* (NSW), which concerns claims for family provision, rather than ss. 92 and 93 of the *Probate and Administration Act 1898* (NSW); grants of representation; and the right to commission for the representative's pains and trouble in administering an estate and interested witnesses. It was apparent that candidates paid superficial attention to these matters in their preparation for the examination.

In question 4, on family provision, most answers were very scant on the last part of the question, which concerned issues surrounding the notional estate. This meant that there were few very good answers.

Overall question 5 was poorly answered. In the first part of the question, which concerned the administration of estates, the major problem encountered by candidates was to determine whether the statutory order of application of assets for the payment

of debts and liabilities was varied by the terms of the will. In the second part of the question candidates demonstrated a rather poor understanding of the new *Succession Act* provisions relating to the construction of wills made on or after 1 March 2008. For example, many candidates attempted to apply s. 41 of the *Succession Act 2006* (NSW), which concerns dispositions to issue of the testator, to dispositions to the testator's siblings. Likewise many attempted to apply s. 42 of the Act, which concerns residuary dispositions, to the specific gifts in the question.