Examiners Comments March 19, Summer Session.

Question 1

(a) Students Generally answered part (a) well. Those who grappled with the facts in relation to Avner’s capacity scored the best marks. Many students only recounted the steps for instituting probate proceedings and did not deal with the facts. Students were required to deal with the fact that Avner was diagnosed with dementia in 2011 and suffered intermittent delusions in 2013, per the test in Banks v Goodfellers.

(b) Once again, those students that grappled with the facts scored the best marks. To undue influence the student should have noticed that Doctor Etherington was gifted the largest proportion of the estate, that is the residue. E was only appointed Avner’s doctor from May 2015, it could be argued both that it may be suspicious that the doctor received such a large proportion of the estate or that 3 years is enough time to have formed a strong bond with the deceased.

In the question of Knowledge and approval one needed to grapple with the fact that Avner did not recognise his wife 5% of the time, and that A would sometimes not recognise his son Darren, combined with a general analysis of A’s mental state.

Question 2

(a) Students performed generally well in regards to the renouncement of an executors duties.

(b) Students were expected to know the difference between a specific and non-specific gift. As such identification of the parts of the relevant gifts were to be analysed and administered as per the wishes of the testator. Most students performed well in this task.
Question 3
(a) This question was answered generally well, most students understood the statutory time limitations, however many students failed to deal with the considerations a court will need to contemplate when making a family provision claim.
(b) Most students had a good grasp of the concept of a notional estate, and the various types transactions that fall within this type of order.
(c) Those students who chose to analyse the Grandchild generally included the most important factor, that being one of dependence.
Those students who chose to analyse Estrangement dealt well with the appropriate case law giving clear and precise examples of the factors the courts will take into account.

Question 4
(a) Students displayed a good understanding of a mutual will.
(b) Many students were confused about the actual definition of dependant relative revocation, stating that it was just a condition of a will.
(c) Generally, students had a good understanding of the meaning of executor de son tort.
(d) This question was answered generally well, as most students determined appropriate issues in relation to minors.
(e) Many students failed to simply state 3 reasons why a person would be preferred over another to organise a funeral and instead rambled on about how one may be buried.

Question 5
This is an intestacy question. It was, by a large, answered well. Issues that had to be addressed were those of distribution on intestacy, focusing on the actual fractional distributions of the estate and the order of which such distributions occur. Many students started their analysis well however failed in their final calculations as to spouses and issues.