EXAMINER’S COMMENTS

The exam comprised four compulsory questions in an closed book format. All questions required students to give advice having regard to factual scenarios.

Most candidates answered four questions in accordance with the instructions. A few students answered some questions in considerable detail and made only a minor attempt at the other questions and I assume that these students may not have allocated sufficient time to properly attempt all four questions. It was also clear that a few students did not read the questions properly.

Although most candidates presented their answers in a clear and legible way, the handwriting of some candidates was difficult to read.

Question 1

This question involved advising Harry about a potential property settlement claim consequent upon the breakdown of his de facto relationship with Sonya.

This question was generally well answered.

Most students referred to the relevant gateway provisions also correctly identified the statutory paragraphs relevant to property division and identified and applied the preferred four-step approach to the facts, as modified by Stanford’s case citing and applying relevant principles drawn from the authorities.

The better answers discussed the relevant principles relating to the treatment of Sonya’s significant initial contributions and the likely treatment of the $100K received from Sonya’s parents.

While most students identified the parties respective contributions, some students did not provide an assessment of the likely percentage range arising from contribution based entitlement. Similarly, while most student correctly identified
relevant future needs factors in relation to each party, some students did not indicate whether an adjustment would be likely, and if so, the range.

Question 2

This question involved advising Jane in relation to a parenting dispute with Steve in relation to their 4 children in circumstances where she alleged family violence and escalating drug use by Steve.

This question was generally well answered by most candidates, although a number of students confused the commencement dates of the referral of powers (by New South Wales to the Commonwealth) over ex-nuptial children with that for de facto financial matters, which was quite concerning.

Most candidates discussed the likely impact of family violence and escalating illicit drug use in providing an exception from the requirement to obtain a s601 certificate; rebutting the presumption of equal shared parental responsibility; and the likely appointment of an independent children’s lawyer and requirement to file a Notice of Abuse as relevant issues.

Better students discussed and applied the unacceptable risk test in circumstances and considered injunctive relief to minimise risk. Better students also clearly followed the legislative pathway.

Question 3

This question was in 2 parts.

Part A involved advice in relation to the requirements for a financial agreement to be binding and circumstances in which such an agreement may be set aside and varied. This question was generally well answered.

Part B covered 2 distinct areas of Family Law.

The first involved advice about the requirements for a valid marriage and was answered very well.

The second involved advice in relation to making arrangements for financial support of children. This required a consideration of the availability of consent
orders (for the older child to enable him to complete hr tertiary education) and child support agreements for the younger child.

This question was reasonably well answered, although the range of answers was quite mixed. Most candidates correctly noted the availability of child support agreements, but the availability of consent orders under the Family Law Act for the older child was less well answered.

**Question 4**

This question was in 2 parts.

**Part A** involved advice in relation to a claim for spousal maintenance. The range of the range of answers was quite mixed. While most candidates correctly identified the statutory paragraphs relevant to spousal maintenance, only a few students adequately discussed and applied the law to the facts which would be important for the court exercising its discretion.

**Part B** concerned the availability of seeking injunctive relief (s 114) against a spouse. This question was very poorly answered. Only a few students identified the availability of injunctive relief as the issue in the question; and fewer of these students applied the relevant law to the facts. Some students appeared to confuse an application for injunctive relief under s 114 and an application under s 106B.