



EXAMINER'S REPORT

AUGUST 2000

REGULATORY ENVIRONMENT FOR MARKETING

General Comments

The number of scripts allows for a brief analysis of each question on the paper and some more general comments. Many of the general comments made in the May, 2000, report could be repeated here but specifically:

- (a) Some 23% of candidates failed to attempt the required number of questions, thereby reducing the maximum possible overall mark to 80 rather than 100.
- (b) Again, the questions dealing with the law of contract, i.e. Questions 1 and 3, were particularly poorly answered, with a virtual absence of any reference to relevant precedents. It was intended that the approach taken in these questions would be more student friendly and facilitate the student in demonstrating his/her knowledge of the law of contract.

Question 1

The question dealt with the issues of offer, acceptance intention to be legally bound and consideration.

Apart from failing to identify the relevant issue concerned in each part of the question, most answers also contained no reference to relevant illustrative precedents of which there are numerous examples. In general, contract law is based on precedent and answers must be supported by such precedents.

Question 2

The question dealing with precedent as a source of law was attempted by a very small number of candidates.

Precedent continues to be one of the primary sources of Irish law and familiarity with its significance is important to an understanding of the legal environment in which business in general operates.

Question 3

The second contract law question on the paper and also one of the most popular questions as indicated by the percentage of candidates who attempted it.

In effect, the question related to the issue as to what constituted a misrepresentation for the purposes of the law of contract. However, in an attempt to assist the student with what can be a difficult concept, the question was broken down into some of the major elements which

are necessary to constitute a misrepresentation. Unfortunately, many candidates simply ignored the question and proceeded to write on the issue of innocent, negligent and fraudulent misrepresentation. Such answers could not attract marks.

Question 4

The most popular question on the paper (attempted by 98% of candidates).

In general, the question was competently answered. There were a number of excellent answers which reflect the identified practice that the paper normally contains a question on the law of agency.

Question 5

The concept of "dealing as a consumer" as introduced by the Sale of Goods and Supply of Services Act, 1980, is central to an understanding of the extent to which implied terms in sale of goods and supply of services contracts can be excluded.

Only a very small percentage of candidates who attempted this question demonstrated any familiarity with this concept. Two cases which illustrate the concept in practice are O'Callaghan v. Hamilton Leasing [1983] and Cunningham v. Woodchester Investments Ltd. [1983].

Question 6

A candidate either knew the answer to this question or did not. This is reflected in the marks obtained which are, in general, either very good or very bad.

Title and the passing of title along with the issue of implied terms are possibly the two most significant aspects of the Sale of Goods legislation. In respect to title and the passing of title, there are two broad issues, the general principles on the passing of property (Sect. 16 - 19 in particular) and the possible *sale* by a non-owner, the *nemo dat* rule [Sect. 21 of the 1893 Act]. Retention or reservation of title is a practical way of avoiding the general rules on the passing of property. This question concerned the *nemo dat* rule exclusively.

Question 7

Attempted by a small percentage of candidates and as with the Competition Law and Policy question on the May paper, generally well answered.

The question contained a chance to give the candidate a wider opportunity to demonstrate a familiarity with the Competition Acts 1991-96 in particular. References to the on-going legal proceedings in the U.S. concerning Microsoft were considered illustrative and relevant.

Question 8

A small number of answers, including some excellent ones.

The approach to questioning the wide and complicated topic of Intellectual Property law will be to allow the candidate to demonstrate an understanding of the overall significance of this topic to the marketing of products and services.