



EXAMINER'S REPORT

MAY 2000

REGULATORY ENVIRONMENT FOR MARKETING

General Comments

The pass rate this year at 67% returned to the 1998 level.

Question 1

One of the questions dealing with the law of contract on the paper.

It presented difficulties for many candidates who were clearly unaware or unfamiliar with the rule of consideration in respect of sufficiency and adequacy. The almost total lack of reference to and reliance upon relevant precedents resulted in numerous poor marks being achieved. Contract questions cannot attract high marks unless there is use of illustrative and relevant precedents.

Question 2

Generally a well answered question by the minority of candidates who attempted it. This question attracted a number of excellent answers which clearly identified the core issues involved in respect of regulations, directives and decisions. In particular, the better answers included reference to illustrate examples of regulations and directives and, in some cases, decisions. In particular, in respect of directives, reference was made to the Product Liability Directive as implemented by the Liability for Defective Products Act 1991 and referred to in Question 5.

Question 3

The question dealt with the use of implied terms in two distinct situations, i.e. by the Courts and by statute. Each requires brief development from the perspective of the answers supplied.

- (a) Almost identical comments apply as with Question 1 which is the other question dealing with the general law of contract. Few candidates appeared to be familiar with the circumstances in which the Courts will consider implying terms into contracts such as to give 'business efficacy' to the contract, arising from customary practice, implied by the Constitution, etc. Most worrying is the fact that only **one** candidate referred to the decision in the Moorecock case, which is central to the concept of giving 'business efficacy' to the contract.
- (b) Almost all answers successfully identified terms implied by the sale of goods legislation, but failed to refer to supply of services contracts (The Sale of Goods and

Supply of Services Act, 1980). Other possible relevant areas included consumer credit contracts (Consumer Credit Act 1995) which candidates on this course should be familiar with as it is specifically mentioned in the subject syllabus.

Question 4

The most popular question on the paper, attempted by over 95% of candidates. It was also the question which overall was answered most competently. There was clear identification of the relevant issues and widespread use of case law. The only possible difficulties related to the areas of agency of necessity and agency by estoppel. In particular, in respect of agency of necessity, many candidates failed to understand that there must be an existing contractual relationship for this concept to arise. In this regard, there were frequent references to Good Samaritans who volunteered to protect the property of their neighbours.

Question 5

Again a very popular question and as with Question 4 competently answered in most cases. In particular, part (b) attracted at least 6 of the 8 available marks for the material presented by most candidates. The only surprising fact was that in respect of part (a) a substantial number of candidates failed to refer to the decision in *Donoghue v Stevenson* which is the historical basis of the law of product liability. Many candidates, on the other hand, referred to numerous illustrative precedents including the leading Irish cases. Clearly this part of the syllabus is now appropriately studied by the majority of candidates with obvious awareness of the significance and effect of the Liability for Defective Products Act 1991.

Question 6

One of the least popular questions on the paper and the resulting answers were of a very mixed standard. The most surprising fact was that a majority of answers failed to refer to the Consumer Information Act 1978. This Act established the office of the Director of Consumer Affairs and Fair Trading and still forms the statutory foundation of the powers and functions exercised by the office. Failure to refer to the 1978 Act could only result in the answer attracting a poor mark. Other legislative measures that could be referred to included the Consumer Credit Act 1995, under which the Director has extensive functions and the Unfair Terms in Consumer Contracts Regulations.

Too many candidates used this question to demonstrate their knowledge of the Sale of Goods and Supply of Services Act 1980. Whilst the Director does have a monitoring role in respect of this Act, its primary function in respect of consumer protection relates to the fact that it confers contractual rights directly on the consumer which it is the function of the consumer to enforce through the courts and, where appropriate, the Small Claims procedure of the District Court. Marks could not be awarded for a substantial analysis of the 1980 Act.

Question 7

One of the most popular questions on the paper. Most candidates attempted parts (a) and (c) of this question to the exclusion of part (b). Too many of the answers to part (a) and, where attempted part (b), were very general in nature. Candidates writing about one specific issue in respect of competition policy of which they were aware. (Usually the present US litigation in respect of Microsoft). There was limited reference to the core of the 1991 Act, i.e. Sections 4,5 and 6. In particular, in answering part (c) of the question, most candidates failed to refer to Section 5 of the 1991 Act (Abuse of a dominant position). A good mark in respect of part (c) could only be obtained by reliance on Section 5 and the Irish cases dealing with a

possible abuse of a dominant position which arose under Section 6. Many candidates appeared to be unaware of the existence of the Competition (Amendment) Act 1996, and, as a result, the significant changes it made to the existing Irish law on competition and competition policy.

Question 8

In the majority of cases, the candidates who attempted this question achieved a good or very good mark based on a clear understanding of the principal Irish legislative measures relating to Intellectual Property. The decision to ask a generic question on Intellectual Property law was an attempt to allow candidates to demonstrate an overall understanding of the significance and application of intellectual property rights, without the need to answer very specific questions on what is a complex topic. This approach was in general successful and appeared to favour the candidates. However, this approach was undermined in situations where the answers clearly indicated that the candidates were unaware of the existence of the Patents Act 1992 and the Trade Marks Act 1996. Some exceptional answers referred to current proposals concerning the reform of the law of copyrights.