



EXAMINER'S REPORT

AUGUST 2001

REGULATORY ENVIRONMENT FOR MARKETING

General Comments

The pass rate for this session was very disappointing at just less than 50%. Some of the factors which contributed to this include:

- (a) Twenty five per cent of candidates failed to attempt the required number of questions.. This perhaps reflects a practice of concentrating on a limited range of topics in the hope that they will occur on the paper. All but one of those candidates failed the paper.
- (b) There were a number of candidates who clearly had done little or no preparation for the paper, this is reflected in the fact that over 25% of candidates received a mark of 25 or less.

Question 1

Examiners' reports for this subject over the years have stressed that, in answering questions on the general law of contract, the candidate must support the answer by reference to relevant illustrative precedents. Most candidates made little or no use of such examples of which there are plenty such as *Kelly v. Cruise Catering Ltd.* [1994] and *Kennedy v. London Express Newspapers Ltd.* [1931]. Many answers contained irrelevant material and only one or two made reference to the possible exclusion of the 'Postal Rule' as regards communication of acceptance.

Question 2

The question concerned the rights and duties of an agent. It was attempted by almost 100% of the candidates and, in general, it was the question for which all candidates achieved the highest mark. The main shortcoming was that several candidates devoted much of their answer to discussing the formation of the relationship of principal and agency. Marks cannot be awarded for irrelevant material, no matter how correct. Very few answers made reference to illustrative case-law such as *Chariot Inns Ltd. V. Assicurazioni General: SPA* [1981].

Question 3

Again, a question dealing with the general law of contract. Attempted by relatively few candidates but the weaknesses already identified as regards such questions were repeated. In part (a) use could have been made of such precedents as *O'Connor v. First National Building Society* [1991] and *Curtis v. Chemical Cleaning and Dyeing Co.* [1951]. Part (b) of the

question was very poorly answered. Issues such as the nature of the document on which the clause is printed, the degree of notice and the time of notice should have been developed.

Question 4

One of the most popular questions on the paper. Despite the fact that the question clearly deals with the implied term of merchantable quality and fitness for purpose which arises under the Sale of Goods legislation, virtually every candidate proceeded to discuss aspects of the Liability for Defective Products Act, 1991. As stated previously, no marks can be awarded for irrelevant material. This was a case for many candidates of 'wishful thinking', i.e. answer the question they know rather than the one on the paper.

Question 5

There are two broad issues encompassed by the Sale of Goods legislation, i.e. implied terms and their exclusion and the rules regarding the transfer of property (ownership) in goods. Most examinations in this subject contain a question on one or other of these topics, if not both, as with this paper. The answers broke down into two distinct but simple categories – those candidates who were familiar with this topic and the related rules, and those who totally misinterpreted the question. The core of the answer should have concentrated on Section 18 of the 1893 Act and the five rules it contains. The better answers also made brief reference to Sections 17 and 19 of the Act.

Question 6

The least popular question on the paper. It is similar to questions which have appeared on previous papers. The purpose of the question is to ensure that candidates are familiar with the range of legislative measures available to the EU and the significance of their impact on our legal system. There were some competent answers to this question.

Question 7

This question was designed so as to allow candidates an opportunity to demonstrate an understanding of the forms of intellectual property rights that are recognised and protected in Irish and international law, primarily through legislative provisions. There were some excellent answers to this question. Candidates were not penalised for failing to refer to the recent legislative provisions dealing with copyright and related issues. The overall purpose of the series of recent legislative provisions dealing with intellectual property is to provide a coherent and effective means for the owners of such property to protect and at the same utilise it.

Question 8

An effective competition policy is crucial to the efficient operation of the market place. Therefore, the examination paper will usually contain a question dealing with the Competition Acts. This question was designed so as to allow the candidate to demonstrate an understanding of the effect of this legislation in practice. Answers should have contained references to Sections 4, 5 and 6 of the 1991 Act and the improved enforcement measures implemented by the 1996 Act. The better answers made reference to some of the recent actions by the Competition Authority, including the first successful prosecution taken under the 1996 Act regarding price-fixing in Limerick.