



EXAMINER'S REPORT

AUGUST 2002

REGULATORY ENVIRONMENT FOR MARKETING

General Comments:

The pass rate as with recent previous results for the August paper was very disappointing at just less than 45%. Some of the factors which continue to contribute to this include:

- (a) A failure of candidates to take note of the issues raised in previous examiners reports and, in particular, the May report.
- (b) Almost 33% of candidates failed to attempt the required number of questions. All but one of these candidates failed the paper. As stated previously, this clearly reflects a practice of concentrating on a limited range of topics in the hope that this approach will be reflected in the questions on the paper.
- (c) There were a number of candidates who clearly had done little or no preparation for this paper. This is reflected by the fact that 25% of candidates attempted less than four questions and also 25% of candidates achieved a total mark of 25 or less.

Question 1

One of the most popular questions on the paper, but the majority of candidates failed to develop the relevant issues which included the possible contractual liability of the retailer under the implied terms of merchantable quality and fitness for purpose as provided for by the Sale of Goods Act 1893 as amended. In addition, there was the issue of product liability and the position of the supplier. This issue could have been examined both from the context of the tort of negligence (*Donoghue v. Stevenson* [1932]) and the Liability for Defective Products Act 1991.

Question 2

Again a very popular question but the tendency was that part (b) was more competently answered than part (a). The classic example of 'unilateral contracts' where the offerer foregoes the need to communicate acceptance is the decision in *Carhill v. Carbolic Smokeball Co.* [1893] (acceptance by performance). The 'Postal Rule' was generally understood and the better answers illustrated the answer by reference to such decisions as *Byrne v. Tienhoven* and *Adams v. Lindsell*.

Question 3

This is an example of a general question on intellectual property rights which has appeared on a number of recent papers. The possible legislative provisions that could be addressed

include the Patents Act 1992, the Trade Marks Act 1996, the Copyright and related rights Act 2001 and the Industrial Designs Act 2001. In fact, most marks were allocated to the 1992 and 1996 Acts in the context of the relative recent enactment of the other two Acts. However, as with previous questions of this nature, a number of candidates appeared to be unaware of the 1992 and 1996 Acts and referred to previous legislation which has been repealed.

Question 4

There are two principal aspects to the implied terms in sale of goods and supply of services contracts which are the detail of the implied terms themselves and the possible exclusion of these implied terms in appropriate circumstances. This question dealt with the second aspect and did not require the development of the implied terms themselves beyond listing them. However, most candidates proceeded to develop the detail of the implied terms and ignored the question and failed to develop core issues such as the concept of “dealing as a consumer”. In such circumstances, very few marks could be awarded to such an answer.

Question 5

Surprisingly attempted by relatively few candidates. Essentially the question required the candidate to illustrate the concept of corporate status by reference to relevant precedents such as *Soloman v. Soloman and Co.* [1893], *Lee v. Lee Air Farming Ltd.* [1961], *Macanna v. Northern Assurance* [1925] and *Battle v. Irish Art Promotions Ltd.* [1996]. Most candidates simply ignored this core requirement and wrote whatever they knew about registered companies.

Question 6

The question should have been answered by reference to such issues as the need for a statement of fact; that the statement must be untrue; that there must be a statement; (better answers would raise the issue of contracts and the utmost good faith) and that there must be reliance on the statement. As appropriate, these points could be illustrated by reference to relevant precedents. However, a substantial number of candidates interpreted the question as requiring a discussion of fraudulent, innocent and negligent misrepresentation. The wording of the question was quite clear so as to avoid any such interpretation.

Question 7

The most popular question on the paper, attempted by virtually all candidates. In general it was competently answered. A number of very good answers illustrated the duties of an agent by reference to cases such as the *Chariots Inn Case* [1981], *John Mc. Cann & Co. v. Pow* [1974] etc.

Question 8

It has been indicated previously that the general approach that will be taken in this examination to the issue of Competition Law and Policy will be to ask a question which will allow the candidate to illustrate his/her understanding of the principles involved. A number of very good answers on this topic took this opportunity and emphasised both the possibility of civil action by a business under Section 6 of the 1991 Act or the enforcement role of the Competition Authority itself in, for example, the *Convoy Dairy case* in Donegal or the prosecution of *Estuary Fuels* in the mid-west.