



## EXAMINER'S REPORT

MAY 2003

### REGULATORY ENVIRONMENT FOR MARKETING

#### General Comments

The pass rate this year at 76% shows a slight decline in the 2002 figure of 82% but is consistent with the previous year when the figure was 77%. As pointed out in the previous reports the reasons for failure remain the same and need to be repeated:

1. Not answering the required number of questions. As with last year only three candidates who attempted less than five questions achieved a pass mark. It appears that a number of candidates decide to concentrate on a fixed number of topics in the hope that they will appear on the paper.
2. The failure to use relevant case-law to illustrate and support the answer with particular reference to the area on contract law.
3. Not answering the question asked or in the case of a question divided into two or more parts only answering a part of the question. No matter how thorough the answer is to a part of a question only the marks allocated to that part can be awarded.

#### Question 1

The question was marked on the basis that candidates may or may not be familiar with the provisions of the Competition Act 2002. This is a complex topic but Competition Law & Policy is a central element of the regulatory environment for business. The better answers were illustrated by reference to appropriate case law, e.g. the Estuary Fuels prosecution or the 'Convoy' injunction action.

#### Question 2

A question dealing with offer and acceptance. The core of the two part question revolved around the issue of acceptance of a unilateral contract and the communication of the revocation of an offer in respect to a unilateral contract. Case of relevance would be *Carlill v Carbolic Smokeball Co* (1893). An obvious difficulty in the withdrawal of an offer where the offeree has commenced acceptance as in these factual situations, the answer revolves around communication of the revocation. Possible cases of relevance include *Byrne Van Tienhoven* (1880), *Dickinson v Dodds* (1876) and *Rutledge v Grant* (1828).

#### Question 3

Intellectual property rights now form a crucial aspect of a business product development and marketing strategy. The question required the candidate to demonstrate an understanding of the characteristics of various forms of intellectual property and the type of protection afforded by various legislative provisions. In particular the answers should concentrate on the new and

innovative measures introduced by these three recent statutory premises e.g. short-term patents, service trade-marks, protection of moral rights in respect to copyright.

#### **Question 4**

This is the first time that the Consumer Credit Act 1995 has been examined for some time. This question was in general very well answered and in particular parts (c) and (b). As regards part (c) many candidates failed to detail the possible exemption from the 'cooling off period', e.g. overdrafts. The better answers referred to E.U. provisions regarding distance selling which incorporates similar 'cooling off' provisions.

#### **Question 5**

Part (a) was well answered and this was the most popular question on the paper. Most candidates identified the central issue in part (b) which revolved around the issue of implied agency and ostensible authority. It was very difficult to argue against the implied authority of Michael to enter the contracts involved. There was no need to develop the issue of ratification. The better answers raised the issue of the possible remedies of Interaction Ltd against Michael for exceeding his authority.

#### **Question 6**

The discussion in part (a) should initially have concentrated on the principles established by the decisions in *Hadley v Baxendale* (1854) and *Victoria Laundry (Windsor) Ltd v Newman Industries Ltd* (1949). Other issues that could be developed include the measure of damages, financial and non-financial loss, mitigation of loss and liquidated damages clauses. The answers to part (b) were in general very disappointing with relatively few candidates referring to even a single illustrative precedent. The circumstances in which a court will and will not grant an order of specific performance should at least have been listed.

#### **Question 7**

The regulatory environment paper normally includes a question on the sale of goods, whether concerning the implied terms in such contracts or the rules regarding the transfer of property (ownership) in such goods. Most candidates who attempted this question identified the five basic rules involved. The better answers developed the rules by reference to illustrative precedents e.g. *Underwood v Burgh Castle Brick Case* (1922) and also in some cases by reference to related concepts such as the retention of title as provided for by Sec 19 of the Sale of Goods Act.

#### **Question 8**

Most candidates listed private and public companies in part (c) but very few referred to unlimited companies and companies limited by guarantee. In part (b) the answer had to be illustrated by reference to relevant precedents such as *Solomon v Solomon & Co. Ltd.* (1897), *Lee v Lee Air Farming Ltd.* (1961), and *Butler v Irish Art Promotions* (1968). The better answers detailed the possible limitations to the concept of the company as a separate and distinct legal entity by reference to the principle of 'lifting the veil of incorporation' either as a result of legislation or at the discretion of the court.