



EXAMINER'S REPORT

AUGUST 2004

REGULATORY ENVIRONMENT FOR MARKETING

General Comments

Over 40% of the candidates attempted less than the required number of questions. This again reflects a tendency, particularly in the August examination, for candidates to concentrate on a limited number of topics and then hope to be 'lucky'. Even if the selected topic is questioned on the paper there is no guarantee that the question will be to the candidates' 'liking'. Again many of the scripts featured the very limited use of illustrative case-law, this was most obvious in respect to Q 2, 3(b), 4 and 6. With some questions there was the recurring problem of candidates answering what they wanted to appear on the examination paper and not the question asked. This was evident in respect to Q 1, 3, 4 and 5.

Question 1

Effectively this is a question which is designed to allow a candidate to demonstrate his/her familiarity with and understanding of the central foundation of Irish competition law and policy i.e. the Competition Act 2002. The answers broke down into two clear categories, those who were familiar with the Act and those who were not. The better answers used a number of illustrative examples of the enforcement activities of the Competition Authority. The website of the authority at www.tca.ie is very useful in this regard.

Question 2

A very straightforward question dealing with a fundamental aspect of the topic of agreement in contract law i.e. the distinction between an offer and an invitation to treat. The use of illustrative precedents is essential to answering this question appropriately. Cases that might have been referred to include: the Boots Cash Chemist case [1953], Fisher v Bell [1961], Partridge v Crittenden [1968] and of course Carlill v Carbolic Smokeball Co [1893].

Question 3

A question concerning the duties of an agent. Part (a) was an opportunity to pick up 4 marks relatively easily and most candidates did so. However part (b) presented different problems. The problem situation concerned the authority of an agent and specifically in the context of the factual situation presented the usual or ostensible authority of an agent. A relevant precedent that might have been referred to is *Watteau v Fenwick* [1983]. All candidates attempted this question but few scored well in part (b). This was due mainly to candidates dealing with irrelevant issues such as agency of necessity.

Question 4

This question was attempted by 50% of the candidates. With very few exceptions they were totally unfamiliar with the concept of 'dealing as a consumer' which is central to the exclusion of the implied terms in both sale of goods and supply of service contracts. Therefore if candidates could not answer part (a) of the question they would also be unable to attempt part (b). Many candidates simply ignored the question and proceeded to discuss the implied terms in sale of goods contracts. This had an obvious effect on the resulting mark. It should also be kept in mind that the 1980 act deals differently with sale of goods and supply of services contracts.

Question 5

The Consumer Information Act 1978 is a core piece of consumer protection legislation. From a marketing perspective, because the act deals with false or misleading information regarding goods, services, price indications or contained in an advertisement, it is of added significance to this subject. Again the website of the Director of Consumer Affairs at www.dca.ie is a very useful source of illustrative examples of the operation of the act. The few candidates who attempted the question provided very poor answers.

Question 6

As with question 2 this question deals with a basic principle of contract law, in this case the use and effectiveness of exemption/exclusion clauses. As with all contract questions the use of illustrative precedents is crucial. Examples of cases which might have been referred to here include; Part (a) *L'Estrange v Graucob* [1934] and *Curtis v Chemical Cleaning and Dyeing Co.* Part (b) *Chapelton v Barry UDC*, *Thompson v LMS Railway* [1930], *Thornton v Shoe Lane Parking Ltd.*, *Hollier v Rambler Motors* and *Interfoto Picture Library v Stiletto Visual Programmes Ltd.*

Question 7

This question allowed a candidate to demonstrate his/her knowledge of two of the most important forms of intellectual property. As with virtually all forms of such property rights these two areas have been the subject of substantial statutory reform in the last 10-15 years. In the case of patents, by the Patents Act 1992 and for trademarks, by the Trademarks Act 1996. Almost 100% of candidates attempted this question but it was very worrying that many of them seemed to be totally unaware of the legislation and/or referred to the previous legislative provisions. The better answers did make reference to relevant illustrative caselaw.

Question 8

Attempted by a very small number of candidates. Clearly in each case this was a matter of 'last resort'. Along with the European Union, legislation is probably the most significant source of law for business in general on a day-to-day basis. A familiarity with the significance of legislation is therefore essential to the operation of any business