



EXAMINER'S REPORT

AUGUST 2005

REGULATORY ENVIRONMENT FOR MARKETING

General Comments

As with all recent August examinations for this subject, the pass rate is very low, this year at circa 30%. Admittedly this is based on a relatively small number of scripts overall. The main shortcomings are those identified in the May scripts

Question 1

Only attempted by a very small number of candidates. Knowledge of the law of product liability and the difference of the basis of liability as between negligence and the 1991 Act is essential in the broader context of the development and marketing of a product for the consumer market. It was not possible to draw any conclusions based on the small number of candidates who attempted the question.

Question 2

The exam paper usually contains at least one question on **either** sale of goods or supply of services contracts. Supply of services contracts are as equally significant, if not more in the current economic climate, as sale of goods contracts. The provisions contained in the Sale of Goods Act 1980 are significantly different as regards the treatment of each type of contract. Many of the answers failed to make this distinction and simply concentrated on sale of goods contracts. Answering the question they wanted rather than the one asked.

Question 3

A relatively straightforward question on the authority of an agent and one of the more popular questions on the paper. The leading case on the issue of the usual or ostensible authority of an agent is *Watteau v Fenwick* [1893] and some of the candidates referred to the case in their answers. As with other questions there was a tendency for some candidates to answer their preferred question, which in this instance appeared to be the creation of the relationship of principal and agent.

Question 4

In general a question which was answered adequately. There is always a question on Competition Law and Policy on this examination paper and the better answers are frequently supported by examples drawn from the annual reports of the Competition Authority. The issue of the enforcement of Competition Law is more and more obvious in the public demesne and is now an integral part of the regulatory environment in which business operates. All candidates should be familiar with the website of the Competition Authority at www.tca.ie.

Question 5

An area which is questioned on occasions, but it is critical to have an understanding of the principle that a company is a separate and distinct legal entity from those who own and control the company. The question can only be adequately answered by reference to illustrative caselaw. Examples of such cases include; *Salomon v Salomon & Co. Ltd.* [1897], *Lee v Lee Air Farming Ltd.* [1961] and *Battle v Irish Art Promotions Ltd* [1968].

Question 6

This question concerned one of the basic rules regarding 'Consideration'. As with question 5, it can only be adequately answered by reference to illustrative caselaw, as is indicated on the face of the question. Relevant cases would include; *Chappell & Co. Ltd. V Nestle Co. Ltd.* [1960], *Stilk v Myrick* [1809], *Hartley v Ponsonby* [1857], *Glasbrook Bros. V Glamorgan County Council* [1925] and *Hamer v Sidway* [1891].

Question 7

This question was attempted by almost 100% of the candidates and the highest mark obtained was 10/20. The majority of those who attempted this question totally missed the core issue involved in this question, which was the application of the remedy of specific performance. This remedy is clearly applicable to this situation in the context that the Jack Yeats painting is 'unique goods'. Most candidates discussed at great length whether or not there was a contract between Michael and Deirdre, which clearly was irrelevant on the basis of the supplied factual situation.

Question 8

The question was a mechanism to allow candidates to demonstrate their familiarity with the principal forms of intellectual property and their application. The better answers to this question, which was attempted by 80% of the candidates, identified the application of copyright and trade marks as been of most relevance to the software for the computer games market. The answer therefore required more than a simple 'listing' of the principal forms of intellectual property and the rights attached to them.