



EXAMINER'S REPORT

MAY 2007

REGULATORY ENVIRONMENT FOR MARKETING

General Comments

A significant number of candidates did not attempt the required number of questions (five). Some candidates clearly experienced difficulties with timing, as some gave detailed explanations of areas, at the expense of other answers. Many of the scripts featured a limited use and knowledge of statutory provision notably in Questions 2, 3 and 7.

Question 1

This question is designed to allow candidates to demonstrate his/her familiarity with the sources of law in Ireland and to support their answer with relevant examples which impact on business practice. It was attempted by the majority of candidates and was generally done well. It required a brief overview of the five main sources of law. Constitutional law was generally well covered as was case law and precedent. The strongest students gave relevant examples of law applying to the business environment e.g. EU competition rules and consumer protection legislation. A number of students omitted to mention legislation primary and secondary legislation as a source of law. Some students also included mention of human rights law.

Question 2

A question based on two main areas of contract law. Most candidates only attempted part (a) on misrepresentation. Candidates needed to demonstrate an understanding of the definition of a misrepresentation, types of misrepresentation and remedies. Part (b) - this section was attempted by only a few. It required a brief of the main contractual rules and an explanation of the effect of the Electronic Commerce Act 2000 on the normal contractual rules. It is highly relevant to marketing and sales practice.

Question 3

Part (a) of this question was a straightforward question on the scope of Sections 13 and 14 Sale of Goods Act. There was opportunity to pick up a number of easy marks by explaining these terms and the importance of the concept of merchantable quality possible exceptions (examination or defects pointed out). Credit was also given for discussion of sales by sample. Very few students dealt with section 13. Some students dealt with misleading advertising in this section. Good candidates noted that these implied terms were absolute as regard consumer purchasers. Part (b) - the section on rights and remedies open to consumers allowed candidates to show knowledge of the rights to reject the contract goods for breach of the implied condition and/or claim damages. Credit was also given for discussion of small claims court action by a consumer generally.

Question 4

This was a popular question. It required the candidate to define the terms of Principal and Agent, outline some types of agent and gave examples. Key areas would include duties of the agent and the principal, termination of the agency. There were some impressively full answers from strong candidates on this topic. Some candidates also mentioned the existence of European Union rules on commercial agency.

Question 5

Part (a) was a general question designed to allow candidates to gain marks for an appreciation of the function of Competition Authority. Good students gave an brief outline of the aim of competition law generally and the functions of the Competition Authority before detailing the powers of the Authority in investigation and prosecution of offences. The response to (b) was mixed. There were marks allocated for a brief discussion of the meaning of dominance and aspects of abuse. Many students, were very aware that dominance itself was not prohibited which was good to see. There were interesting cases given as examples. The second aspect, anti-competitive agreements with the possible exemptions and the grant of licences was generally less thoroughly covered by the students .

Question 6

Very few candidates attempted this question which allowed candidates to show their knowledge of the scheme of the Act particularly the issues of strict liability, defective products, and possible defence to actions. Good candidates discussed the limitations of the tort of negligence and Donoghue v Stevenson and gave the principles outlined in the case and the differences introduced by the Product Liability Directive and LDPA 1991.

Question 7

This was a straightforward question on the scope and application of an important Act, impacting on consumers and businesses. In part (a) it was easy to pick up marks for an explanation of the core points in section 39. The key implied terms were missed by most who attempted this question. In (b) very few dealt with the issue of exclusion clauses and protection given by the Sales of Goods and Supply of Services Act 1980 or the European Communities (Unfair Terms in Consumer Contracts) Regulations, 1995 and 2000 .

Question 8

The question aimed to allow students to apply their knowledge on aspects of Intellectual Property protection and application to a product. Strong students explained the concept of intellectual property before going on to discuss patents and trademarks in detail. Good candidates noted the requirement to search the register and directed the material towards the product in question. A few candidates mentioned the European Patent which was good to see. Strong students also discussed potential protection via industrial designs and the protection of advertising material via the law of copyright. Passing off was also mentioned by a few candidates. There were some excellent answers to this question.