



EXAMINER'S REPORT

AUGUST 2007

REGULATORY ENVIRONMENT FOR MARKETING

General Comments

In this paper many candidates did not tackle five full questions, which meant a greatly reduced possibility of passing the paper well. Whilst there were some good answers on Questions 1 and 2, there was a noticeable reluctance to tackle Question 6 or to gear material to the quotation given in question 8. Answering the question asked is a key skill which is being tested, some candidates in the heat of the exam seem to see a topic they recognise and write whatever they recall about it, rather than showing their knowledge by answering the set question.

Question 1

This question was designed to allow candidates to demonstrate his/her knowledge of key aspects of agency law. The better candidates supported their points with relevant examples and case law.

Question 2

This was a contract law problem question which required discussion of the nature of contractual offer and communication of acceptance and the effect of the postal rule under *Adams v Lindsell* and *Household Fire Insurance v Grant* and the time of the contract. The purported revocation of the acceptance was ineffective. Some discussion of Sean's remedies and the measure of contractual damages was included by the best candidates.

Question 3

This was a straightforward question on different types of EU legislation, all of which are relevant in the sale and marketing area. What was required was a brief description of each type of law, the purpose of each type of provision, and the method of incorporation under Art 249 EC.

Question 4

This allowed candidates to demonstrate their knowledge of the development of the tort of negligence and its application in the current business world. A full explanation of the elements of the tort under *Donoghue v Stevenson* would have provided a basis for discussion of the tort in the regulation of the workplace (the employer's duty of care to employees) and in road travel and the provision of goods and services. It was a deliberately wide question to allow students to include various aspects of tort which they may have studied.

Question 5

This concerned aspects of Intellectual Property protection and application to a product. It required consideration of whether an application for a patent/trademark was required. Some candidates noted the requirement to search the register and directed the material towards the product in question. A few candidates were aware of the European Patent.

Question 6

Few candidates attempted this question on product liability which required an explanation of the scope and application of the Liability for Defective Products Act 1991. Key issues such as the meaning of product, producer, defect, damage and strict liability needed to be discussed and applied to the facts.

Question 7

This was a Sales of Goods Act and exclusion clause question. In parts (a) and (b) it was easy to pick up marks for an explanation of the implied terms and the remedies of a buyer. In (c) 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

This was a general question designed to allow candidates to gain marks for an appreciation of the role of Competition law in the economy and the protection of the consumer. It allowed candidates to discuss the Act and the functions of the Competition Authority with particular reference to consumer protection.