

Commercial Transactions Examiner comments

September 2013

QUESTION 1

All students covered the gift aspect, some very well, but very few addressed the other issues raised by the facts.

As well as whether there had been a valid common law gift,....doubts re delivery (no signed transfer), or conditional... they would have to face allegations...if not a gift, was there a contract to assign shares if son took over work load? Did he hold his share in Trust for family? Could he claim there had been misleading and deceptive conduct or vice versa? Unconscionable conduct to deny him everything?

QUESTION 2

Almost all students attempted this question. A good general knowledge of B2C product liability and ACL guarantees 54, 55 evident from answers. Some excellent answers.

QUESTION 3

This was a B2B transaction, the SOGA applied and it related to performance of a contract for the sale of goods-i.e. ambiguity in the contract over the quantity of petroleum purchased v. quantity delivered.

Many students answered the question well. Others were distracted from the main issue, by references to title and instalments. This was not a title question.

QUESTION 4

Most students understood that it was first necessary to ascertain the legal and/or security interest held by Jim, Dan, Rural and LiveCo and analysed this well. A surprisingly good understanding of this new area of the law and familiarity with the Maiden Civil case was evident from answers.

QUESTION 5

This was a straight forward non-disclosure question, which for some reason, was not generally well answered.

QUESTION 6

Most students answered this question with a great range in the quality of answers.

M. Noonan 30/9/2013.