

Commercial Transactions

March 2013

Examiners Comments

- Q1. All students who attempted this question covered one relevant aspect (bailment, confusio/comingling, contract, PPSA) but very few addressed more. A number of students described the elements of Bailment, but did not give advice to Mr Hill as to what he should do, as required by the question.
- Q2. Good general knowledge of B2C product liability law evident, but poor analysis of facts widespread, leading to problems with identification of the heads of potential liability. Prize was the manufacturer, but not the supplier to consumers. It supplied to Supermarkets who supplied to consumers. Many students treated pets as "individuals" instead of "goods", re ACL defective goods provisions (ss. 138-142). A number applied the SOGA re consumers when there was no contract between Prize and consumers to apply it to.
- Q3. A popular question, and almost everyone readily appreciated that it was a B2B transaction, that the SOGA applied and that the issues involved related to performance of a contract. Answers displayed a good general commercial understanding of problems raised and dispute resolution techniques. A surprising number of students implied a term into the contract via SOGA s. 19 (fitness for purpose, merchantability) rather than the simpler alternative of a term implied by s. 18(description). Some fuzziness on contract law was evident. E.g. a few students said that there was no contract, but then implied terms into the nonexistent contract.
- Q4. This was a relatively easy question which was answered well in a couple of cases, but otherwise surprisingly poorly. Provided that the document met the formal requirements for a valid Promissory Note, a negotiable instrument under the BoEA, Roofmat could bring a straightforward action on the PN with limited defences available. The issue of whether "by" a particular date met the requirement for a fixed or determinable time was not picked up by a single student answering this question.
- Q5. Most students attempted this question on insurance and most correctly identified the relevant law. It was encouraging to see that many students had read and understood Tjep, and the relationship between ss. 54 and 56 when dealing with a fraudulent claim. There was, however, some blending and fuzziness in understanding the application of ss 54 and 56, misapplication of ss. 21 and 28 and a lack of appreciation of the difference between *avoiding the contract of insurance* and *refusing to pay a claim* in some answers.
- Q6. Almost all students answered this question requiring largely descriptive answers to 5 short questions, and handled it well.