

Report of Chief Examiner on Exam Responses March 2014

This report is supplementary to Marking Advice Sheet for Examinations for Term 1 2014.

High Success Rate

Of 84 students who sat for the exam, only 2 failed and at the time of report, one is subject to revising examiner review. There are 2 students at the time of report whose papers were referred back for typing due to illegibility in parts and their results are to be integrated with the whole cohort after marking.

Achievement Rate.

This was a very well prepared cohort. There were: (final figures subject to review of 3 papers)

Passes with Distinction:	38 (45.24%)
Passes with Merit:	29 (34.52%)
Passes:	13 (15.48%)
Failed:	2 (2.38%)
Marking pending	2 (2.38%)

The results as at present mean that almost 80% of students scored 65% or better and the failure rate was again very low, notwithstanding that the exam questions required extensive understanding and searching preparation.

General observations:

1. There is a recurring trend of digression to introduce irrelevant material, as if some display of other knowledge was better than none. Sometimes also, students do not address the key aspects asked in a question. No marks can be awarded for irrelevant material or relevant matters unanswered, although some limited lead-in will earn points for depth of understanding. Eg in Q3(b), the law about the effect on a contract of building illegality before *Carpenter v McGrath*, when dealing with the result of that case and the legislation which modified its effect.
2. There was evidence that students in the Pass with Merit cohort, were not prepared for one or two questions in which they fared poorly, but distinction level responses in the assignment and at least 2 other questions brought them over 65.
3. A small minority of students did not understand that Q 1(a) raised the case of *Luxford v Sidhuor* if they did, either refused to undertake or did not address the type of searches which might need to be undertaken in compliance with instructions. The question called for a description of the facts of that case and the difference as relevant to the facts of Q1(a).
4. Questions 2 and 4, which posed gritty problems of a type currently experienced in private practice, were well handled on the whole, especially those who answered both, mostly as their first 2 choices, reflecting a relish for real life practical problems. There were disappointingly few who proposed mediation in Q2. Quite a few students omitted to address the misleading and deceptive criteria of the Australian Consumer Law or the string of recent cases on those criteria, confining solutions to general law of misrepresentation.

5. A small minority of students did not understand that Q 4 raised S. 28 of the EP&A Act, and diverted discussion about restrictive covenants. Several even mistook *Hillpalm v Heavens Door* as relevant.
6. The teachers of the course have many times re-iterated the repeal of the 2005 Conveyancing etc Regulation and its replacement with the 2010 version, but about 15% of students are still referring to the 2005 clause numbers 19 and 20, instead of 16 and 17, which in an open book exam means they are not equipped with a current Regulation, but relying on a text published before Reg. 2010.
7. Up to 30% of students wrongly stated that the 2010 Regulation Schedule 3 cl 1(b) prescribed (implied) warranty required the annexure of a Sewer Mains diagram for compliance, whereas it only implies a warranty that at the date of the contract the land does not contain any part of a sewer except as disclosed. Those students may have been confused with Schedule 1, cl 2 of which requires attachment of a diagram showing position of sewer in relation to the land.
8. For Q5(c) quite a few students did not address the Regulation Schedule 3 Part 1 1(a) and 2(a) as the source of "proposals", while nevertheless referring to various cases interpreting what a proposal is in some factual circumstances.

Examiners' gripes:

- 9 Many students are not completing page numbers on the front page as required, leaving examiners to do it.
- 10 About 15% of students are commencing answers, abandoning them as if completed, on which basis the examiner marks them, only to discover further answer to the question at the back pages or elsewhere, requiring a re-consideration of marks.
11. Many answers are too lengthy, mostly due to irrelevant or repetitive material. As a guide, 29 of the Distinction papers were completed in one book, 9 in 2 books (sometimes only a page or 2 extra). Therefore from examiner's experience, an average of 4-6 pages, is likely to be enough per question unless handwriting is double-lined (which is OK) or spread wide. Except for that, it means a 4 part question should be about 1 to 1½ pages per part.
12. Facts of cases may be limited sufficiently to convey to the examiner the background to the principal or *ratio decidendi* of the case. *Luxford v Sidhu* was an exception, because the facts of that case were very germane to the expected response to the question.
- 13 Legislation can be conveniently be summarised without need to quote it in full, providing the summary is accurate and adequate to convey its ambit. Q 3(b) required most of S.149E to be reproduced to show the full extent of the roles a building certificate can play in conveyancing.
14. Many times students failed to show where one part of a question ended and the next part began, leaving it to the examiner to wrestle with it and work out where the separation was.

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MARCH 2014

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44 examination scripts were received of which:-

1. 23 achieved a Pass with Distinction: 75-100 (53%);
2. 15 achieved a Pass with Merit: 65-74 (34%); and
3. 6 achieved a Pass: 50-64 (13%).

44

Question 1

- (a) Most referred to LUXFORD V SIDHU, but failed to answer the question.
- (b) Well answered, as expected.

Question 2

Few recommended mediation.

Question 3

- (a) Some answered, incorrectly, that a sewer mains diagram was a prescribed document and failed to refer to clause 1(b), CSL Regulation 2010 (Reg).
- (b) A few did not refer to clause 1(d), Schedule 3 of the Reg.

Question 4

Most discussed LENNARD V JESSICA ESTATES, as contemplated.

Question 5

- (a), (b) & (d) Mostly well answered, as was to be expected.
- (c) Few referred to clauses 2(a) & 2(b), Part 1, Schedule 3, Reg.

General Comments

The marks and corresponding grades awarded reflect the standard achieved by students.

Students who achieved a Pass with Distinction demonstrated a superior understanding of key issues and supported their views by citing relevant law.

Presentation, legibility, grammar, spelling, and excessive length of answers, in some cases, were disappointing.

Identifying questions/parts of question was not addressed by a few. Others added further answers (to earlier questions), without notice, in later pages.

Some students ignored answering the question, or digressed by introducing irrelevant material, neither of which was conducive to gaining marks.

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21/05/2014