

## **EXAMINERS COMMENTS**

### **Commercial Transactions - March 2009**

#### **SECTION A QUESTION 1**

Most students dealt with the first part of this bailment question well.

Some students described bailment, but did not go on to deal with other parts of question-evidence required and chances of success, or did not deal with them well.

Some of the better answers dealt with a possible change in the duty of the bailee when the cattle were not returned after 9 months.... the Mitchell effect and how a bailment for reward with professed skill (the ad) might create a higher duty.

#### **CT EXAM March 2009 SECTION A QUESTION 2**

Students found this sale of goods question difficult.

Many students ignored the fact that Freshfoods was outside Australia and asserted that Samar or Farmsales could just bring a domestic action rather than refer to the Vienna convention.

A considerable number of students forgot who they were advising and just generally described some law they thought relevant rather than answer the question

#### **CT EXAM March 2009 SECTION A QUESTION 3**

Students found this question difficult. Most students recommended an application for an injunction for (a) but did not go on to say which avenue-equity or TPA-or how they would show they were entitled to one.

Most students explored title for (b) and SOGA ss. 22,23...but incorrectly saw the equipment as ascertained goods; whereas, at the time of the contract it was unascertained goods and so while all but 1 student applied Rule 1 or 2, it should have been 5.

Many students correctly identified that this might have been a contract for services with materials supplied or severable contracts-one for services and one for goods. Unfortunately, many went on to apply s. 74 of the TPA, although there was no consumer.

Many students confused the network and services not being as promised with not being fit for the purpose.

#### **CT EXAM March 2009 SECTION B QUESTION 1**

This question was reasonably well handled

Students were expected to distinguish the two different situations-namely: fraud without forgery re the poor box account and fraud with forgery on the general account-

#### **CT EXAM March 2009 SECTION B QUESTION 2**

This question was answered reasonably well.

Better students noted that the trigger was the change in legislation and questioned the link between that and the mainly property strategy. They also queried whether the strategy was public knowledge and therefore something the insurer should have known. One lone student queried whether the strategy was a "business" rather than a risk issue per FAI.

#### **CT EXAM March 2009 SECTION B QUESTION 3**

Students are always more comfortable with theoretical questions than with problems and this semester was no different. Most students obtained good marks on this question.