

Commercial Transactions

EXAM SEPTEMBER 2009

Examiners Comments

QUESTION A1

All students understood that this question was about Bailment and the provision of services. The Bailment aspect was invariably answered well, with all students identifying that a Bailment existed, discussing the duties of the Bailee and the onus of proof.

A number of students mistakenly thought that sub bailments were involved. Everyone who serviced the car was an employee of PSC.

Approximately 50% of students dealt more generally with the provision of services including the potential application of s. 74 of the Trade Practices Act.

QUESTION A2

Of those students who correctly analysed this problem as involving the provision of services, a substantial number tried to manipulate the facts to turn it into a Bailment question. While it was clearly a licence rather than a bailment, marks were given if bailment was nevertheless covered well. The more acceptable approach was to imply a warranty pursuant to s. 74 TPA into the Contract for services, conclude that the exclusion clause was void due to s. 68 TPA and in (b) work through the things necessary to prove to be successful. Those students who adopted this latter approach did well.

QUESTION A3

Students found this question difficult. It concerned title and gifts, including a consideration of agreements to sell v. sale agreements of goods, ss.22 and 23 SOGA, and the nemo dat rule.

A number of students carefully analysed the formation of the agreements using a timeline and were rewarded for doing so. Marks were awarded for analysis and argument, rather than the particular conclusion reached, as a couple of different outcomes were possible.

A surprising number of students ignored the gift issue raised by N, when advising SM.

QUESTION B1

It was clear to all students that this question was about insurance. Some students put down everything they knew about insurance, but had difficulty addressing the specific issues. Coverage of the ramifications of a joint (versus severable) policy, a fraudulent claim (s. 56), the public policy argument for deterrence of fraud were required. Some students covered s. 54 quite well, but s. 56 was more appropriate in the circumstances.

QUESTION B2

All students who answered this question knew it was about cheques, the Cheques Act, and conversion. Correct analysis of the facts and application of the relevant law was less universal.

QUESTION B3

As with every exam, most students answered these short theoretical questions well; many obtaining full marks.

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21 September, 2009