

**COMMERCIAL TRANSACTIONS EXAMINATION SEPTEMBER 2008
EXAMINERS COMMENTS**

SECTION A QUESTION 1

This question explored student's knowledge of gifts, title and bailment and the possible interactions between them. Other minor issues were validity of the original purchase, abandonment, and copyright as personal property separate from the physical paintings.

Most students who attempted the question understood it and worked through at least 2/3 issues.

SECTION A QUESTION 2

Students were expected to explore product liability-merchantable quality, fitness for purpose and defective goods. To do that required coverage of the contracts between the various parties, and parts of the Sale of Goods Act and Trade Practices Act. Some students saw the potential benefit of US action or use of the Vienna Convention (via Forrest) in order to involve the US manufacturer.

Most students answered adequately, but too many assumed that just because something went wrong, a successful action is always possible and attempted to manipulate the law in their efforts to conclude that Tim would achieve compensation.

Unfortunately, also a few too many used expressions such as... "clearly" or "obviously" not of merchantable quality, ...which is inappropriate in a legal context. Such a statement must be supported with an explanation of what merchantable quality means by reference to a section, or the common law, and assessment of the facts against that meaning.

SECTION A QUESTION 3

This question was about title, title retention, nemo dat and exceptions. It was not well answered due to an inadequate analysis of the particular clause in the specific circumstances.

SECTION B QUESTION 1

Most students covered cheque dishonour and the Weblink claims. One of the few defences to action for dishonour of a cheque, is fraud and so in order to answer the question well, it was important to analyse the Weblink claim to assess whether it had a right to set-off damages against the action for dishonour. If so, it would get a business for the right price. If not, it would have to pay the full amount of the cheque and become an unsecured creditor for the claim. Very different outcomes for the Receiver (and Weblink).

SECTION B QUESTION 2

This question was generally answered well by with the duty of disclosure and ss. 13,21,21A and 28 of the Insurance Contracts Act. There was some confusion with mistaken application of s. 54 in a few answers.

SECTION B QUESTION 3

As always, most students did better on these short theoretical questions than on the problem questions.

A few students answered (a) as though it were a reference to Westpoint and not Opes Prime. A surprising number of students listed office leases and premises mortgages as personal property for (b) when they are obviously interests in real estate. (e) (i) and (j) were remarkably well answered.