

SEMESTER II EXAMINATIONS - SUMMER 1999/2000

**BACHELOR OF CORPORATE LAW - SECOND YEAR
OCCASIONAL STUDENTS**

COMMERCIAL LAW II (LW404)

**Professor N.E. Palmer
Ms. C. Gardiner**

**Time Allowed: Two Hours. Erasmus Students: Two and a Half Hours
Answer Three Questions**

1. Vine Wines Ltd. is a wine importing company. The articles of association of the company provided that the directors could appoint a managing director. One of the directors, Reilly, has taken on the role of managing director, even though he has never formally been appointed as such. Reilly recently entered into a contract on behalf of the company with Creaky Construction Ltd., a building company, for the construction of an extension to the wine cellar at Vine Wine's premises. The other directors of the company did not authorise this transaction and claim that they are not bound by this contract. It has also come to their attention that Reilly received £1,000 from Creaky Construction Ltd. as an inducement to enter the contract with them.

Advise Vine Wines Ltd.

2. "The Common law has traditionally viewed the principal as the person requiring protection against wrongful use of the agent's powers and has paid little attention to the rights of the agent. The European Communities (Commercial Agents Regulations) 1994 which implement Directive 86/653/EEC considerably strengthen the rights of the commercial agent as defined." Discuss.
3. Critically assess the test of materiality of facts with regard to the duty of disclosure in insurance contracts.

4. Brennans Bookshop in Galway, owned by Jack and Maud Yeats, specialises in sales of books which have an Irish interest. It has a very large export trade world wide. The success of Brennans has been due in large part to the skilful management of their employee, Nora Barnaby, who is widely respected for her literary knowledge and business acumen. She has built up the export side of the business and dealt exclusively with it. Export trade accounts for 60% of the profits of the business.

— Nora's employment contract contains a non-compete clause prohibiting her from soliciting customers of Brennans for a period of two years after leaving their employment, in County Galway. The contract also precludes her from disclosing any information gained as a result of her employment.

Nora has become unhappy at Brennans and has decided to branch out on her own. She has now set up her own book-selling business in Galway. Brennans wish to enforce the non-compete clause and they notify it to the competition authority. Advise Brennans as to how the Competition Authority is likely to view the clause.

5. Analyse and discuss the approach adopted by the courts and the Competition Authority to the question of whether an undertaking is abusing a dominant position under S.5 Competition Act 1991.