

SEMESTER II EXAMINATIONS - SUMMER 1998/1999

**BACHELOR OF CORPORATE LAW - SECOND YEAR**

COMMERCIAL LAW (LW215)

Professor N.E. Palmer

Professor L. O'Malley

Ms. C. Gardiner

Time Allowed: **THREE** Hours

Answer **FOUR** Questions, **TWO** questions from PART A and **TWO** Questions from PART B

Please use separate Answer Books

PART A

Answer **TWO** Questions

Please use separate Answer Book

1. *"The key feature of agency is the agent's power to alter his principal's legal position by making contracts on his behalf". Discuss the authority of the agent to bind his principal.*
2. Robert is a business man and managing director of Pipeline Ltd, a company which manufactures plastic pipes. He has concluded a deal with a company in Kerry to sell and deliver to them a quantity of pipes. He contacts Heavy Haulage Ltd., a carrier, which agrees to transport the pipes by road. Heavy Haulage Ltd offers to arrange insurance for the goods in transit. Robert does not think this is necessary but reluctantly agrees to this on behalf of Pipeline Ltd. Heavy Haulage arranges the insurance with Celtic Insurance Company. Everything was arranged over the telephone and the insurance was put in place. Robert was not asked to fill out a proposal form, nor did he ever see any certificate of insurance. The next day, Heavy Haulage proceeded to transport the pipes. While the truck driver was taking a break for lunch, the truck carrying the load was stolen and later found burned out. The entire load was destroyed. Celtic Insurance Company has now refused to pay on the policy because they have discovered that 12 years ago, Robert was convicted on two counts of theft of a motor vehicle and arson. Advise Robert as to whether, in your opinion, Celtic is legally entitled to avoid the Insurance Policy and repudiate liabilities.
- S.4 (1) of the Irish Competition Act 1991 prohibits all agreements, decisions or concerted practices between undertakings or associations of undertakings which have as their object or effect, the prevention, restriction or distortion of competition in the State. Discuss how this prohibition has operated in practice.*
4. Analyse and discuss any **TWO** of the following:
  - (a) The impact of the *Commercial Agents Regulations 1994* on the rights and duties of commercial agents as defined.
  - (b) The principles of indemnity, subrogation, double insurance and contribution in insurance law.
  - (c) Abuse of a dominant position under the *Competition Act 1991*.

PTO

## PART B

Answer TWO Questions

Please use separate Answer Book

5. O'Mahonys Ltd (the purchasers) ordered 30 T.V. sets from Electronics plc. When the goods were delivered, O'Mahonys Ltd rejected them as being of inferior quality, although this was denied by Electronics plc. When Electronics plc threatened to bring legal proceedings for breach of contract, O'Mahonys Ltd replied that there was no enforceable contract as there had been no 'acceptance and receipt' of the goods as required by section four of the Sale of Goods Act, 1893. Even if there was an enforceable contract, it was alleged, they would still be entitled to reject the goods for failure to comply with the implied terms as to quality contained in that Act. Electronics plc rejected these arguments and referred the purchasers to the clause in their terms and conditions of sale which purported to exclude all conditions and warranties as to the quality of the goods, whether express or implied.

Discuss the legal issues raised and, consistent with the information available, advise O'Mahonys Ltd as to the company's legal position. In what ways, if any, would your advice be different if the purchaser was Mr. John O'Mahony who bought a T.V. set from Electronics plc for his private use?

6. Answer BOTH parts (a) AND (b)

(a) Distinguish a credit sale agreement from a hire-purchase agreement.

(b) Pat took possession of a £20,000 car under a hire-purchase agreement with the ABC Finance Co. which provided for the payment of monthly instalments by Pat for a three year period. One year later Pat, who had failed to pay the two previous monthly instalments, sold the car to Street-Wise Motors Ltd for £12,000, and they in turn sold the car to Joe for £15,000. When ABC Finance Co. discovered what had happened, they repossessed the car which was then parked outside Joe's house.

Advise the ABC Finance Co. and Joe as to their legal position.

7. The *Liability for Defective Products Act, 1991* has not added significantly to the potential liability of a manufacturer in respect of defective products.

Discuss.

8. Answer EITHER (a) OR (b).

(a) Motors Ltd sold a BMW car (valued at £45,000) to O'Brien for £25,000 and the trade-in of his old VW car. Motors Ltd agreed that O'Brien would retain possession of the VW car until the BMW was ready for delivery. While the car was in his possession, the VW was stolen and later found burned-out and abandoned in a local housing estate. When the BMW was ready for delivery, Motors Ltd refused to hand over the new car although O'Brien tendered £25,000 and the damaged car by way of payment. Motors Ltd alleged that the company had a lien on the new car and were entitled to hold on to it until it received compensation for the wrecked VW. O'Brien denied this and claimed that Motors Ltd was in breach of contract.

Discuss the legal issues involved.

### OR

(b) 'The truth is ... a consumer is as defined by statute or other regulatory measure.' (Timothy Bird, 'Dealing as Consumer', in *Commercial Law Practitioner*, Jan. 1999, p. 10.)

Examine the meaning and reach of the terms 'consumer' and 'dealing as consumer' in modern consumer protection statutes.