



## **Examiner's Comments**

### **08 COMMERCIAL TRANSACTIONS**

#### **September 2025 Examinations**

**The exam comprised of four questions. Candidates were required to answer four questions. All questions were of equal value (20 marks each).**

#### **Question 1**

The first question concerned the law of bailment, and tortious interference with goods. More specifically, it concerned the duty of a bailee to take reasonable care, the principles by which sub-bailments arise, and the availability of claims in conversion and detinue.

#### **Question 2**

The second question concerned the passage of title rules under the *Sale of Goods Act 1923* (NSW) ('SOGA'). These included the rules concerning when title passed under ss 22 (parties' intentions) and 23 (default rules), and the exceptions to the *nemo dat* principle contained in ss 26(1) (estoppel) and 28(2) (buyer in possession).

#### **Question 3**

The third question concerned statutory unconscionable conduct under s 21 of the *Australian Consumer Law* ('ACL'), and misleading or deceptive conduct under s 18 of the ACL. It also concerned the determination of remedies under s 237 of the ACL.

#### **Question 4**

The fourth question concerned the *Personal Property Securities Act 2009* (Cth) ('PPSA'). It required analysis of the existence of security interests under PPSA ss 12(1) and (3), and the effect of the vesting provision contained in s 267.

#### **Characteristics of poor or average responses**

Poor or average responses failed to closely consider the facts in their analysis of how the law applied. For example, in questions one and three, many papers failed to develop detailed arguments based upon the facts of the question. Instead, they made broad assertions that did not justify their conclusions as to how the law applied to the facts. Similarly in questions two and four, although most papers correctly identified some or most of the issues, they often glossed over explaining in sufficient detail how the law applied to the facts.

Another feature of some poor or average papers was that they failed to identify relevant issues, and/or spent time analysing irrelevant issues. For example, many papers in question three spent time laboriously working through uncontroversial issues, at the expense of addressing those issues that were contentious and needed more detailed analysis. Similarly, some papers in question four spent an unnecessarily long time discussing uncontroversial issues, at the expense of focusing on the contentious points that would have benefited from further analysis.

### **Characteristics of very good or excellent responses**

There were few excellent responses, but some good responses. Better responses tended to concisely state the relevant legal principles, and closely analyse how those principles applied to the facts. Better responses also spent more time on contentious issues, and developed arguments and counter-arguments as to how the law applied to the facts in relation to those issues.

### **Common mistakes**

As indicated above, a common mistake was to spend too much time describing the law at the expense of applying it to the facts. Another common mistake was to spend too much time dealing with issues that were uncontentious, and not enough time developing arguments as to how the law applied in relation to those issues that were less black and white.

### **Areas for improvement**

The largest area for improvement in terms of content knowledge is the operation of s 21 of the ACL. Other areas for improvement are the principles concerning the exceptions to the *nemo dat* rule under the SOGA, and the principles governing when sub-bailments arise.

More generally, almost every student would benefit from spending time working on their legal writing skills. Even among better papers, there was a tendency to spend too much time just describing the law in the abstract (even where it was relevant), at the expense of developing arguments based upon how the law applies to facts.