**Answer Guidance for Chapter 12 Practice Questions**

**1. Do you consider that the principles of nemo dat strike an acceptable balance between the original owner of the goods and the innocent purchaser?**

This question examines your understanding of the tension between the rights of the original owner of the goods and the innocent purchaser, one of whom will lose out.

Although the application of the *nemo dat* rule (or one of its exceptions) will lead to one of the parties succeeding at the expense of the others, it was suggested in *Ingram v Little* [1961] 1 QB 31 that a preferable solution might be to apportion the loss between the innocent victims. In his dissenting judgment, Devlin LJ explained that “the true spirit of the common law is to override theoretical distinctions when they stand in the way of doing practical justice. For the doing of justice, the relevant question in this sort of case is . . . which of two innocent parties shall suffer for the fraud of a third. The plain answer is that the loss should be divided between them in such proportion as is just in all the circumstances. If it be pure misfortune, the loss should be borne equally; if the fault or imprudence of either party has caused or contributed to the loss, it should be borne by that party in the whole or in the greater part.”

Notwithstanding the apparent fairness of such an approach, it does not represent the law. As already discussed, the law adopts an ‘all or nothing’ approach where the courts have to choose between upholding the rights of the original owner of the goods or protecting the interests of a purchaser who buys in good faith and for value. This was explained by Denning LJ in *Bishopgate Motor Finance Corporation Ltd v Transport Brakes Ltd* [1949] 1 KB 322 who said that “in the development of our law, two principles have striven for mastery. The first is for the protection of property: no one can give a better title than he himself possesses. The second is for the protection of commercial transactions: the person who takes in good faith and for value without notice should get a good title. The first principle has held sway for a long time, but it has been modified by the common law itself and by statute so as to meet the needs of our own times.”

There are numerous cases where the unfairness of the rule can be seen and you should provide a few examples in your answer, covering the different exceptions to the rule. You should also point out that because the law favours the original owner of the goods and thereby protects him rather than an innocent purchaser the balance will always be tipped in favour of the original owner.

A good answer would include a detailed discussion of the various rules to the *nemo dat* principle and its exceptions.

**2. ComCorp opens a new office and needs to purchase some computers. It purchases six computers from Chris, who advertises himself as a local computer salesman. In fact, Chris is a rogue and has stolen the computers from his employer, Computer Sales plc. Chris delivers and installs the computers in ComCorp’s offices and ComCorp pays him for the goods. Six months later, as a result of the recession, ComCorp closes its office and sell the computers to Tom, who has just set up a new publishing business. Tom pays ComCorp for these computers and collects them from its offices. When Computer Sales plc finds out what has happened it dismisses Chris, who promptly disappears. Computer Sales plc writes to ComCorp demanding the return of the computers. ComCorp explains that it paid for them in good faith, but that in any event it has now sold them to Tom. Tom also refuses to hand them over to Computer Sales plc, claiming ownership as he, too, has paid for them and had no idea they were originally stolen.**

 **Who has title in the computers? Would your advice be different if, instead of the subject matter being computers, they were motor vehicles?**

The computers were neither owned by Chris nor did he sell them with the owner’s consent. Therefore, the principle of *nemo* *dat* provides that no property in them will be transferred to ComCorp unless one of the exceptions applies which in this case it doesn’t. A brief discussion of the exceptions therefore would be warranted.

As ComCorp doesn’t own the computers, the sale by them to Tom cannot therefore transfer ownership to him unless, once again, one of the exceptions applies.

The final part of the question asks whether your advice would be different if, instead of the subject matter being computers, they were motor vehicles. The answer depends on whether or not the motor vehicles were on hire purchase. If they were, then you should apply s 27 of the Hire Purchase Act 1964 insofar as this would protect the first bona fide private purchaser who purchases the car from a person in possession under a hire purchase or conditional sale agreement. In such a case, this purchaser will obtain title to the vehicle even though the seller has no title himself.