

Examiner's report

CTSI Professional Competency Framework

Stage 1: Unit 1 Regulatory Environment & Enforcement Examiner's Report May 2022

General

Well done to all candidates who undertook this examination. Undertaking examinations is a big commitment, so congratulations to all of you who took on the challenge. 31 candidates sat the examination and the marks achieved ranged between 18 and 78.

As mentioned in last year's report, some candidates demonstrated a low level of knowledge in civil law and struggled to answer questions in areas such as contract law and the Consumer Rights Act 2015, which are both fundamental elements of knowledge within this unit. It is important that all candidates review the syllabus and ensure they are prepared to answer questions relating to all syllabus areas. There were also a few very strong papers demonstrating excellent knowledge in many of the areas of the syllabus. This was very pleasing to see and clearly reflected a good level of knowledge and hard work put in by the candidates.

In addition to reviewing the syllabus, candidates should ensure that they practice their exam writing technique, including time management. Practicing answering past papers under timed conditions will help you with this. It is also important that candidates take the time to understand the question they are answering and ensure that their answers address all elements of the question. Writing everything a candidate knows about a subject area, if it is irrelevant to the question, wastes time and will result in little or no marks for their hard work.

Section A

Q1 This was a very popular question which was attempted by 23 candidates, with some poor answers which failed to obtain any marks and one excellent answer, which obtained full marks. Most candidates understood the question correctly and were able to provide some discussion about the legal presumptions in the business and social or domestic contexts and provide relevant case law. Some candidates misinterpreted the question or lacked the knowledge in this area to obtain a pass mark.

This question was asking candidates to identify the presumption that parties entering into a contract in a business context are more likely to have intended to create a legal relationship, whereas the opposite is true in the social or domestic context. Relevant case law, such as *Edwards v Skyways Ltd*, *Balfour v Balfour* or *Merritt v Merritt* could have been used to support candidates' answers.

Q2 This question was attempted by 24 candidates, with marks ranging between 1 and 8. It was concerning that some candidates did not understand what precedence means, particularly as case law is such an integral part of contract law and across the consumer protection landscape. Strong answers to this question explained that it involves following what has been decided before (*stare decisis*) and went on to discuss how the various courts bind themselves and/or the lower

courts and to explain the parts of the judgment that are binding. Advantages and disadvantages could have included predictability, certainty, flexibility, distinguishing of cases, being timely and the challenges involved with keeping up-to-date with case law judgments.

- Q3** Only 4 candidates attempted this question with marks ranging from 2 – 7. The defences for Part 1 of the Consumer Protection Act 1987 can be found under Section 4 of the Act and listing these would have given candidates full marks. Claims must be made within 3 years of whichever is later; when the cause of action occurred or the claimant has knowledge of significant injury, damage attributable to the defect and details of the person responsible. No claim can be brought after 10 years.
- Q4** This was a popular question with 28 candidates choosing to answer it. The range of marks were between 2 and 10. Candidates who achieved low marks made very little reference to the criteria set out in Section 9 of the Consumer Rights Act 2015, which is what the question asked, and instead provided practical examples and explanations of how to consider whether goods are of a satisfactory quality, which was not asked for. This is a clear example of where candidates need to ensure they are reading the question and answering what is being asked of them. Listing the factors set out in Section 9 would have obtained full marks for this question.
- Q5** This was not a popular question with only 4 candidates answering it. No candidate achieved a pass mark for this question. Unfair contract terms are a topic listed on the syllabus and candidates should ensure they have a good working knowledge of this area of law. This question required candidates to know about the requirements of Section 64 of the Consumer Rights Act 2015. It sets out the areas that cannot be assessed for fairness under Section 62 of the Act (the fairness test) and excludes the main subject matter of the contract and adequacy of price from the fairness test. To obtain a good mark in this question, candidates were also expected to identify that these exclusions only apply if the terms are prominent and transparent, otherwise they can be assessed for fairness and that this exemption does not apply to terms that appear on the 'grey list' as these terms can always be assessed for fairness.
- Q6** 7 candidates attempted this question and the marks awarded were between 1 and 7. This question required candidates to explain privity of contract and explain circumstances where a third party may be able to enforce a contract. The better answers included points such as only parties to a contract can bring an action under the contract and contracts cannot place obligations onto third parties to the contract. Case law such as *Tweedle v Atkinson* could also have been mentioned.

When discussing when third parties may be able to enforce a contract, English and Welsh candidates could have referred to Contracts (Rights of Third Parties) Act 1999 and mentioned factors such as whether the contract expressly provides that the third party can enforce the term, if the contract confers a benefit on the third part or if the third party is identifiable in the contract. Scottish candidates could have referred to The Contract (Third Party Rights) Act 2017 and factors such as the whether the third party is identifiable in the contract, the parties to the contract intend for the right to be enforceable and if the contract includes an undertaking that one or more of the parties will/or will not do something.

Section B

Q7 This was the most popular Section B question, with 19 candidates choosing to answer it. Over half of the candidates attempting this question achieved a pass mark, with marks ranging from 5 – 23. There were several very low marks for this question, which demonstrated a lack of knowledge in some of the key areas of the syllabus; the Consumer Rights Act 2015 and contract law.

Part (a) required candidates to discuss whether a contract had been formed between Charlotte and Gamerz and whether the terms and conditions had been incorporated. Candidates needed to discuss concepts such as invitation to treat, offer, acceptance, consideration (if relevant) and identify these elements in the contract and decide whether a contract had been formed. Very good answers also considered the case law around instantaneous communication methods. Marks were given for legal reasoning even if the conclusion may have differed to that of the examiner. Relevant case law could have included *Olley v Marlborough Court Hotel*, *Parker v South Eastern Railway* etc.

Part (b) asked candidates to discuss what the Consumer Rights Act 2015 states about the delivery of goods in a sales contract, as well as the circumstances and action needed to be taken in order to bring a contract to an end. Section 28 of the Act provides this information.

Part (c) was expecting candidates to identify that as the goods include digital content, Section 16 of the Consumer Rights Act 2015 would apply, and the goods were not of a satisfactory quality. Some candidates discussed digital content but as the game was not supplied in its digital form, it would not meet this definition. Candidates would then need to outline the relevant remedies for both the Consumer Rights Act 2015 and the common law, which some candidates forgot to address in their answer.

Q8 13 candidates elected to answer this question, with marks ranging from 4 – 27. There was one particularly good answer to this question which demonstrated a very good knowledge by the candidate.

Part (a) required a discussion about what having sufficient evidence to proceed with a criminal case means and this was answered reasonably well by most candidates. Candidates could have discussed factors including success, reliability, admissibility etc.

Part (b) required candidates to list factors from the public interest stage, such as seriousness of the offence, level of culpability of the suspect, circumstances and level of harm caused to the victim, suspect's age and maturity etc. Marks were given for any relevant factors identified.

Part (c) tested candidate's knowledge of the requirement to publish a set of clear service standards. Listing the 6 factors that the Regulator's Code states should be included in the service standards, as well as the additional requirements such as ensuring it is accessible, clearly signposted and on the regulator's website and ensuring Officers comply with the service standards and enforcement policy.

Q9 This was a popular question with 17 candidates choosing to answer it. Over half of the candidates who attempted this question achieved a pass mark for it, with marks ranging from 2 – 32. There was one outstanding answer which was very impressive and demonstrated strong knowledge in the areas explored in this question.

This question was assessing the candidates' knowledge on the law of misrepresentation, the Consumer Rights Act 2015 and any relevant remedies. Candidates should ensure that they answer all parts of the question in order to maximise the number of marks that can be obtained, as some candidates only addressed some parts of the question and this would have limited the marks

available to them. The question also asked candidates to write an email and, on the whole, candidates did this well.

Candidates were expected to discuss the advert and verbal representations made to Mr Williams and apply the law of misrepresentation to the scenario. For example, at the time the advert was placed, the statement may have been true but this was not the case during the verbal representation made to Mr Williams over the telephone. The elements of misrepresentation needed to be discussed to determine whether they are met in this scenario, with reference to case law such as *With v O'Flanagan*. The Misrepresentation Act for English and Welsh candidates or the Law Reform (Miscellaneous Provisions) Scotland Act 1985 for Scottish candidates could also have been referred to. The relevant remedies also needed outlining as part of the answer.

Section 50 of the Consumer Rights Act 2015 should also have been discussed in relation to the verbal statements made to Mr Williams, as well as Section 49 (reasonable care and skill) in relation to the quality of the work carried out by Emily. The relevant rights and remedies also needed identifying. Candidates should also have considered unfair contract terms, the prohibition under Section 57 and identified that it would not be binding upon the consumer; although the rest of the contract would still be binding on both parties.

Q10 This question was chosen by 12 candidates and was answered reasonably well by the majority of those who answered it. Marks awarded ranged from 7 – 23. The objectives and burdens of proof in civil and criminal law is on the detailed knowledge part of the syllabus for this unit and it was pleasing to see that part (a) of this question was generally answered well.

In part (a), good answers identified the burdens of proof for both civil and criminal law and then provided a discussion about the purposes of civil and criminal law. These could have included protecting people from harm and damage to property, retaining order in society, acting as a deterrent for criminal law and for civil law, factors such as rights and responsibilities for individuals and organisations when dealing with each other, fairness and equity and the differences between being found guilty/not guilty or liable/not liable.

Part (b) required candidates to outline the maximum value of cases that can be heard on the small claims track or in the Sheriff Court via Simple Procedure and the differences to the other tracks or Summary Cause and Ordinary Cause. For English and Welsh candidates, the maximum value is £10,000 or £1000 for personal injury and for Scottish candidates, the maximum value was £5000. Discussions of the differences could have included that the court procedures are simplified and more informal, whether the legal representation costs can be claimed and identifying the other tracks or Summary Cause and Ordinary Cause and how they are different.

Part (c) required candidates to identify the enforcement methods/process available for parties awarded a County Court judgment or who have success in a Simple procedure. Examples for English and Welsh candidates could have included warranty of execution, third party debt orders and charging orders and for Scottish candidates could have included the employment of the Sheriff Officers and service of charge, for example.