

Examiner's report

CTSI Professional Competency Framework

Stage 1: Unit 1 Regulatory Environment and Enforcement Examiner's Report May 2023

General

45 candidates sat the Unit 1 examination paper this year and 84% of candidates attained a pass mark or higher. Three students achieved over 70% in this examination paper, which was very impressive and demonstrated an excellent knowledge across the syllabus, as well as good time management and examination technique.

Candidates who obtained lower marks often lacked sufficient detail in their answers or failed to focus on the question set. As previously advised, it is important that candidates practice reading examination questions and adopting a methodical approach to answering them.

With questions which are broken down into parts, candidates should consider how much detail is required for the marks available and use this as a guide for the amount of time they spend on each part of the question. This will help candidates to ensure they are not wasting too much time on parts of a question which only have a small number of marks on offer.

Section A

Q1 This was a very popular question and was answered by 38 candidates. Marks ranged from 3 – 10 and some excellent answers were provided, with the majority of candidates achieving 8 or more.

Marks were available for briefly outlining the purpose of criminal law. Time was unfortunately wasted here by candidates who compared the purposes of criminal law to the purposes of civil law, which was not asked for in this question. Candidates could have discussed points such as the deterrence of non-desirable behaviour, protection of the public, property and the environment, consequences for conducting non-desirable behaviour and maintaining order in society.

The question then asked candidates to identify two advantages and two disadvantages to taking a criminal prosecution. This part of the question was answered well by most candidates.

Q2 This question was attempted by 39 candidates and was the most popular question on the paper. The marks for this question ranged from 2 – 10.

For part (a), this question asked candidates to discuss the main factors that need to be present in order for acceptance to take place. Strong answers discussed factors such as an offer has to have been made, must remain open and have not been withdrawn for example, the acceptance must indicate that both parties are in agreement on all the main terms of the contract and the acceptance must have been communicated to the offeror or completed via performance.

Some candidates became confused during part (b) of the question and did not discuss the termination of an offer but instead outlined how contracts could be breached or frustrated. Contract law is a key part of the Unit 1 syllabus, and it is important that candidates understand the elements

clearly and can distinguish between them. Candidates who answered this part of the question well discussed revocation and withdrawal of the offer, rejection of the offer, making a counter-offer, lapse of time etc.

Part (c) of the question focused on the postal rule and it was clear which candidates understood the general requirements of acceptance and that as an exception to these general rules, acceptance under the postal rule takes place at the time when the communication has been posted. Acceptance can therefore take place if it was correctly addressed to the offeror, even if it is not received by them.

Q3 Only 6 candidates attempted this question with marks ranging from 1 - 6.

Some candidates discussed the general provisions of the Consumer Rights Act 2015, which did not relate to guarantees and would have been better selecting a different question to answer.

To obtain a good mark in this question, candidates needed to be familiar with the requirements of Section 30(2) of the Consumer Rights Act 2015, which defines guarantees. Guarantees are undertakings given to a consumer without extra charge by a person acting in the course of their business (the guarantor), to reimburse the price paid for the goods or to repair, replace or handle the goods if they do not meet the specifications set out in the guarantee statement or associated advertising. Extended warranties usually require consumers to pay for them and they are covered by general contract law principles rather than the Consumer Rights Act 2015. Therefore, they are only as good as the terms and conditions within them.

Q4 20 candidates choose to answer this question, with marks ranging between 3 and 10. There were some excellent answers to this question which obtained full marks.

Candidates who clearly identified the relevant tracks and the claim values they can deal with, scored highly in this question. Some candidates confused the names of the tracks, for example, English and Welsh candidates did not correctly identify the small claims track, fast track and multi-range track and the value claims they usually deal with.

Q5 This was a popular question and was answered by 27 candidates. The marks achieved for this question ranged between 1 and 9.

It was really pleasing to see some excellent answers on the incorporation of terms and the different ways terms can be incorporated into a contract. Strong answers included a brief explanation of incorporation of terms and then went on to discuss incorporation via signature, by reasonable notice, brought to the attention of the other party, by custom, course of prior dealing, implied by statute etc. Relevant case law referred to included *L'Estrange v Graucob*, *British Crane Hire v Ipswich Plant Hire* and *Spurling v Bradshaw*.

Candidates who did not score well on this question discussed different types of terms, such as warranties and conditions, as opposed to how terms are incorporated into a contract. Having a clear understanding of contract law terminology will help to address issues.

Q6 This was not a popular question with only 3 candidates attempting to answer it and the marks awarded were between 4 and 6.

To obtain good marks in this question, candidates needed to explain expectation losses, which are where the party is placed in the position as if the contract had been performed. Candidates could have discussed *Robinson v Harman* (1848) and factors such as the reasonableness in light of the

sustained loss, such as in *Ruxley Electronics and Construction Ltd v Forsyth* [1996] and the economic difference between what was received and what should have been received. Reliance losses enable the party to claim for wasted expenditure if no loss has been incurred or can be proven, and the expenditure is in the reasonable contemplation of the parties. Candidates then needed to discuss the statement and whether they agree with it. This could have been done by discussing the case of *Anglian TV v Reed* [1972], for example.

Section B

- Q7** This was the least popular Section B question, with 18 candidates choosing to answer it. Marks achieved were 6 – 23.

This question focused on assessing the candidate's knowledge of unfair contract terms under Part 2 of the Consumer Rights Act 2015. There were some very good answers to parts of this question, which clearly demonstrated a good level of knowledge and application, even under examination conditions. With a question such as this, candidates need to have a methodical approach to answering all aspects of the question to obtain maximum marks. Some candidates only addressed the terms and did not address the issues raised in the text above and below the terms or talked about unfair terms generally and did not address the issues raised in the email scenario.

Questions that candidates may have wanted to ask included when was the contract entered into, could Mrs Ali provide a copy of the whole contract (as the contract should be assessed for fairness as a whole), where there any secondary contracts and questions relating to whether the terms have been incorporated into the contract correctly.

When considering the price of the contract, candidates needed to identify that the price is a core exemption and could not be assessed for fairness under Section 62 if price is prominent and transparent.

When discussing the personal injury exclusion, strong answers identified that this may be a blacklisted term and can also be assessed for fairness. Also, if it is on the grey list, the term is more likely to be deemed unfair.

When discussing the limitation clause restricting damages to less than the contractual price, a discussion point could have included restricting a consumer's rights under Part 1 of the Consumer Rights Act 2015 and being a blacklisted term under Section 57(3). Also, as it is a term on the grey list, it may be more likely to be unfair. Just because the business includes a statement saying the terms do not affect the consumer's statutory rights does not make the term fair.

Discussions around the variation clause could have included that the term may be unfair as it is on the grey list however as the situations when the terms can be varied are very narrow in scope and clearly set out for the consumer before they enter the contract, this could be deemed to be a fair term. Payments taken in advance may require further information such as how far in advance did Mrs Ali book the venue. Term could be caught on the grey list so more likely to be unfair. Candidates could have discussed points such as trader only retaining genuine costs incurred and whether it would be fair for the trader to retain all the costs if they then hired out the room to someone else.

The scenario then required candidates to answer Mrs Ali's question about fairness and so the test set out in Section 62 needed to be discussed as well as a discussion about the payment and cancellation rights that Mrs Ali asks about. Some candidates stated that if a term is unfair then Mrs Ali can cancel the contract and obtain a full refund. This is not correct. Candidates need to be clear about the effects of unfair contract terms on the remainder of the contract.

- Q8** This was a popular question with 24 candidates electing to answer this question, with marks ranging from 2 - 28.

Part (a) required an explanation of the difference between ratio decidendi and obiter dicta. This part of the question was generally answered well and most candidates were able to distinguish between the terms to a basic level, with some candidates providing excellent explanations.

Part (b) required candidates to demonstrate knowledge of the court hierarchy and explain how precedent applies to each court. Candidates who used a methodical approach to identify the court hierarchy and whether the court bound itself and/or lower courts obtained very good marks in this part of the question. There were some very impressive answers that even provided case law to support their points. Candidates who did not have a good grasp of the court structure and how precedent applied to each one, provided a more general discussion, which did not produce as many marks due to lacking sufficient detail. Some candidates also provided irrelevant information, such as the sentencing powers of the courts which was not asked for in this question.

Q9 This was another popular question with 24 candidates choosing to answer it. Marks ranged between 9 and an excellent 33 marks, which was very impressive.

Candidates clearly took on board feedback from their revision days and from past examiner reports and ensured that their leaflets were in an appropriate format. Some candidates forgot that the leaflet was supposed to be a business leaflet and others discussed other legislation which was not required by this question.

Good answers to this question discussed areas such as the rights under Section 9 (satisfactory quality), Section 10 (goods fit for a particular purpose), Section 11 (as described), Section 13 (sample), Section 14 (model), Section 16 (digital content in car) and Section 17 (right to supply goods) and the relevant remedies for these rights, including the short term right to reject, repair/replacement, price reduction and final right to reject. Candidates needed to focus on remedies available under the Consumer Rights Act 2015, as this is what the question required.

Two examples of common problems, as well as the remedies a consumer would be entitled to in the situations chosen, were required to finish off the answer. Good answers set out different examples clearly, identified the relevant rights that were breached and the remedies available to the consumer in the examples selected.

Q10 This question was chosen by 23 candidates and was answered reasonably well by the majority of those who answered it. Marks awarded ranged from 5 - 21.

Part (a) required an explanation of mediation and strong answers included that it is a method used to settle a dispute/case with the assistance of an independent and impartial third party who can assist in the discussion of issues, negotiation and help parties to reach a mutually convenient solution. Some candidates also discussed that mediation can be engaged with before taking legal action or during legal action.

Part (b) was generally well answered by most candidates. Candidates who clearly set out advantages and disadvantages inside the courts and the advantages and disadvantages outside of the courts, tended to achieve higher marks than candidates who adopted a less structured approach to their answer. When providing advantages and disadvantages, it is important that candidates use the marks on offer to give them an indication as to how many advantages and disadvantages to provide and each one should be different. Some candidates made the same point in several different ways in their answer.

The final part of the question required an explanation of an Ombudsman, when they can be used and required an example of a sector which has an Ombudsman. Good answers included points such as the services are often free for consumers to use but often charge businesses, they can review how a decision has been made and assess if there is any injustice by reviewing all evidence provided by both parties. Candidates also discussed that consumers often have to follow the business's internal complaints procedure and if they reach a deadlock or the complaint is not resolved within 8 weeks for example, then they can refer a complaint to the Ombudsman. Some decisions made by Ombudsman are legally binding on the business. Examples provided could have included the Financial Ombudsman or the Property Ombudsman, amongst others.