

## Examiner's report

### CTSI Professional Competency Framework

#### Stage 1: Unit 1 Examiner's Report May 2021

##### General

Once again, I would like to start my Report by congratulating every candidate who managed to make it to the exam room. It has not been an easy year for you, so thank-you for all of your hard work. Twenty-one candidates sat the examination.

It was encouraging to find that most candidates had heeded my comments from the last exam (September 2020) and did attempt every aspect of the question that had been asked. Also, most candidates did shape their answer as a letter or a report if asked to do so which would earn that vital extra mark.

It was noted by the examiner that some candidates, in their answers, wrote about every case reference that they have heard. The correct method for answering these types of questions, is to apply case law to what you have been asked. Adding case references into your answers is acceptable, but be aware that this may not attract the marks available to you.

##### Section A

**Q1** Twelve candidates attempted this question and most passed. Time was wasted explaining the differences between Magistrates (or Justices of the Peace) and Judges including how smart their clothes were!

English candidates were expected to explain the options open to the Magistrates Court to refer the case to the Crown Court, both at the start of a hearing and after a verdict had been reached. It was also important to make clear that the defendant, in a triable either way case, also had a choice and could not be denied to their right to trial by jury.

Scottish candidates were expected to explain the role of the Procurator Fiscal in deciding which court a triable either way offence was heard in.

**Q2** I was pleased that most of the seventeen candidates that attempted this question passed.

The question expected candidates to apply contract law, in the context of shop, explaining (using relevant case law) that goods on display are most likely to be invitations to treat with offer and acceptance taking place at the till. Most candidates, perhaps influenced by the older cases, explained that the consumer made the offer by presenting the goods and the cashier decided whether or not to accept that offer. It could be argued that, in many modern retail settings where barcode pricing is used, the trader makes the offer at the till with the consumer deciding whether or not to accept the price displayed. There was good use of relevant case law in many answers.

**Q3** It was really disappointing that the majority of the twelve candidates who attempted this question did not achieve a pass. This might suggest that revision should not just be focussed on the goods provisions of the Consumer Rights Act 2015.

This question required candidates to explain section 50 Consumer Rights Act 2015. This makes a trader liable for what they, or their representatives, say about the business or the service they will provide and the remedies available to the consumer if this right is breached.

Too much time was wasted explaining other rights that consumers have when contracting for services, which is not what the question had asked for.

**Q4** Congratulations to nine out of the twelve candidates, who had clearly revised this topic. This resulted in some very high marks explaining what a misrepresentation was and the different types, with good references to cases that explained the difference between a statement of fact and a statement of opinion.

**Q5** Only three candidates answered this question, and only one achieved a pass. This topic is listed in the syllabus as requiring a working knowledge of case law and the doctrine of precedence, so it was reasonable for it to be covered in the exam.

All candidates referred to case law in their answers to other questions, so it was disappointing that so few could explain how these decisions were reached and how lower courts were bound by the decisions of the higher courts.

**Q6** There seems a general fear of unfair terms in this subject and only two of the five candidates that attempted this question achieved a pass.

Candidates were expected to refer to Part 1 & 2 Consumer Rights Act 2015 and how sections 31, 47 and 56 form part of a list of prohibited terms that attempt to exclude consumer's rights when buying goods, digital content and services. Candidates were also expected to explain the enforcement role of Trading Standards, the Competition and Markets Authority and other bodies, who could use both injunctions (interdicts) or undertakings to prevent the use of unfair terms.

## Section B

**Q7** This was a very popular questions with most of the fifteen candidates, who attempted, it earning high marks.

Candidates were expected to write a letter to Siobhan explaining her responsibilities, under the Consumer Rights Act 2015, when selling furniture and floor coverings to consumers.

I was impressed how well candidates identified, and quite often explained, the relevant consumer rights. This included section 16, when installation formed part of the contract, but I also accepted section 49 requiring installation to be carried out with reasonable care and skill. It is a particular bee in my bonnet that fitness of goods for their normal purpose is part of the assessment of satisfactory quality (section 9), whereas section 10 makes trader responsible for any particular purpose that has been made known to them - highly relevant for a business who will be advising on what rooms carpets can be laid in.

Most candidates also handled remedies really well, combining this with an explanation of when the reversed burden of proof would and would not (short term right to reject) apply. However candidates must be clear, for the sake of their 'day job' that consumer's rights do not end at six months.

Although not expected, I also rewarded information regarding the use of unfair terms. Overall I was very impressed by the level of revision that allowed for a large amount of detailed information to be included in answers.

**Q8** Those who had revised well were able to achieve high marks by answering this question, with five out of the six candidates doing really well. Best marks were gained from not only explaining the six principles of the Regulators' Code, but also explaining what they meant in practical terms.

**Q9** Eleven candidates attempted this question.

Candidates were expected to analyse four different scenarios that unlucky Martin had encountered on his shopping trip.

With regard to the damage to his car caused by an out of control line of trolleys, I had expected candidates to identify that the supermarket were vicariously liable for the actions of a member of their staff and Martin would have a claim in negligence (delict). However the question had not made clear that the car park was free to use, and an alternative approach was accepted based upon contract law and the supermarket's Consumer Rights Act responsibility to deliver their parking service with reasonable care and skill. However some candidates wasted time discussing whether a sign restricting the supermarket's responsibility was binding, the questions simply stated that the supermarket Manager had told Martin that he parked at his own risk.

Most candidates made clear that Martin's contract was with Harry's Hardware for the shear sharpening service, even though the work was carried out by a third party. This then led to a discussion regarding the use of reasonable care and skill.

Several candidates overlooked that the Consumer Rights Act, in section 10, makes a trader responsible for a particular purpose made known to them. Therefore Harry, by advising Martin what paint to use, had bound his business to the right that the paint should work on metal chairs. However, I did also expect a consideration of whether Martin had lost his right to reject by opening the tin and using the paint without reading the instructions, meaning that he could not return the paint in the same condition as when it was sold.

Finally, the llama in the garden was intended to lead candidates to consider *Carlill v Carbolic Smoke Ball Co*. Was the note through the letterbox an offer to the world at large which Martin accepted by catching and tying up the llama? Some candidates also suggested that the Farm Park had been negligent, which would have dealt with the damage to the dahlias but would not have addressed whether Martin was entitled to the £50 reward.

**Q10** Only eight candidates attempted this question.

a) The best answers included an accurate definition of satisfactory quality and applied this to cars, in practical terms, citing relevant case law. I felt several candidates wanted to throw in any case relating to goods, which were not really relevant to the sale of second-hand cars.

b) This part seemed to throw several candidates and was simply looking for an explanation that, for motor vehicles only, the refund for the final right to reject could always be subject to a deduction for usage, unlike other goods where a full refund has to be given for the first six months from when the consumer obtained the goods.

c) Most candidates wrote well about ADR schemes, but did not always make clear that there were different types - conciliation, mediation and arbitration. Most candidates identified relevant benefits and risks and the best answers made these relevant to the motor trade.

