

Examiner's report

CTSI Professional Competency Framework

Stage 1: Unit 1 Examiner's Report September 2021

General

Once again, thank-you and well done to the 16 candidates who took this exam. Things aren't still as they should be for examination candidates, so to make it to the exam room is an achievement.

The results for this paper were different to what I have seen before with some very high marks but also several that were low and nowhere near a pass mark. What has been clear is that some candidates do not have a good grasp of civil law: contract and Consumer Rights Act, in particular. I am sorry, if you come from an enforcement role, but the largest element of this syllabus is civil law related and you must be able to cover it in your answers.

Section A

Q1 A generally very well answered question with most candidates able to explain what ADR is, the different types, steps a trader must take when deadlock is reached and its benefits.

Many candidates overlooked conciliation as a recognised form of ADR. This approach is where a third-party attempts to communicate with both parties to help them reach a settlement without offering full mediation. This is often used by Trading Standards, approved trader schemes and trade associations to help resolve disputes, often avoiding both parties needing to resort to needing an approved ADR scheme.

Q2 This was not a popular question with only one candidate achieving a pass mark.

Candidates tended to focus on the concept of vulnerability used in their enforcement work, rather than explaining contract law principles. Contract law places challenging burdens on a party to be able to avoid a contract, due to their lack of capacity, whilst retaining the right to enforce it.

Answers should have looked at lack of capacity in the context of minors, people with mental illness and those under the influence of alcohol or drugs.

Q3 There was quite a range of answers here, with those who had prepared on all aspects of the Consumer Rights Act 2015 standing out.

I expected candidates to focus on the principal rights that sections 34 - 41 and 46 provide consumers.

Once again, as I commented in my last Report about goods rights, I must remind candidates (and their tutors) that fitness for all normal purposes is part of the definition of satisfactory quality found in section 34 (section 9 for goods). Section 35 (section 10 for goods) refers to fitness for any particular purpose that the consumer has made known, either expressly or by implication, to the trader. This is a very different term which reflects on the expertise of the seller, who has helped the consumer to

choose the goods that they need - the goods are of satisfactory quality, they are just not suitable for that particular purpose.

- Q4** Another contract law question which was poorly answered, with only one candidate achieving a pass mark. Candidates were expected to identify conditions, warranties and innominate terms and the remedies available when each type of term is broken.

Some recognition was given for referring to implied and express terms, although how a term has become incorporated into a contract does not define the remedy if it is breached.

- Q5** It would appear that many candidates took a gamble that a product liability question would not come up. This was a straightforward question if you had revised the topic. Sadly, only one candidate achieved a bare pass.

Although it was, arguably, relevant to make brief reference to the principles of negligence/delict and Donoghue v Stevenson, Part 1 Consumer Protection Act 1987 sets out its own, very clear, route to redress which the question required candidates to explain.

- Q6** This question was generally well answered by most candidates. It required candidates to explain the purposes of the two jurisdictions and then explain the very different burdens of proof. This means that, based upon the same facts, it is likely to be easier to prove a civil claim, on the balance of probabilities, compared to meeting the standard of beyond all reasonable doubt for a criminal prosecution.

Section B

- Q7** Only two candidates achieved a pass for this question, with one candidate providing an exceptional answer.

Most candidates managed to answer part a) but few were able to explain the grounds for appeal, and to which courts, available to the prosecution and the defendant. This part did not require a discussion of the hierarchy of the courts, which was part of the answer for part c), however marks were allocated irrespective of where the information was written.

Candidates did better at explaining the importance of case law and how court decisions bind courts lower in the hierarchy.

- Q8** This was not a popular question with only 1 candidate achieving a good pass.

- Q9** This proved a popular question with over half of candidates achieving a pass, some with high marks. Those who did not do well seemed unprepared for this type of question and were not familiar with basic contract law principles.

As always, in this type of question, there is no single right answer and marking rewarded good reasoning and application of contract law principles, even if I did not agree with your conclusion.

In part a), you were looking at a purchase made over the internet. It is generally agreed that, in these types of transaction, the website is an invitation to treat and clicking the 'buy now' button is an offer. It was not clear whether acceptance had taken place, it was most likely to have been defined in the terms which Ceri had not read, and candidates were required to discuss this. Some candidates added that the law of mistake (law of error in Scotland) might also be another argument against Ceri having entered into a binding contract.

In part b) the starting point was that Ceri had entered into a contract but the exclusion clause may not have been incorporated into her contract - Olley v Marlborough Court Hotel or Thornton v Shoe

Lane Parking was often quoted. Regarding the remedy available to Ceri, candidates could have gone down the route of negligence (delict) or breach of the implied term of using reasonable care and skill (section 49 CRA). Depending upon the route that candidates took, section 57 CRA would make the exclusion clause a banned term, or if negligence (delict) was seen as the likely claim then the tests of fairness within Part 2 CRA would apply. Candidates should note that section 65 CRA only bars restrictions on liability for death or personal injury caused by negligence, therefore the general test of fairness (s.64) would be more appropriate in this situation.

Part c) required candidates to identify that the scenario was likely to be treated as an offer to the world at large leading to a unilateral contract, as held in *Carlill v Carbolic Smoke Ball Co*. There was room for discussion that the offer was not clear as to whether Ceri was entitled to a free drink for herself, or whether her Trading Standards colleagues should also benefit.

Many thanks to the candidate who wished Ceri the best of luck for her career in Trading Standards, I think she will need it!

Q10 I am very sorry that there was a mistake in this question and that someone called Mary appeared in the middle of this question. I have taken account of this in my marking.

This question required candidates to apply Part 1 Consumer Rights Act 2015 to a scenario involving the sale of goods to a consumer.

In part a), candidates were required to explain the definition of satisfactory quality and apply this to the facts of the case

In part b), candidates were required to apply the remedies available to Benita who had owned the car for only 10 days. Primarily this meant that, if there was a non-conformance, she had a short-term right to reject, or she could ask or agree to a repair or replacement. Good answers made clear that the 30-day clock stopped ticking if Benita did agree to a repair and started again when she got the car back. Good answers also made clear that, even though this was a motor vehicle, the trader could make no deduction for usage if the short-term right to reject remedy was being used.

In part c) candidates could have argued that the exclusion clause, on the back of the receipt, was not incorporated into the contract and the sign in the "Bargain Basement" was not seen by Benita but by someone else. For those who were aware that Benita and Mary were the same person, such a term could not exclude liability for the breach of the term of satisfactory quality, because section 31 CRA states that such terms are not binding.