

Examiner's report

CTSI Professional Competency Framework

Stage 1: Unit 1 Regulatory Environment and Enforcement Examiner's Report November 2019

General

Well done to every student who took the exam in November. It has been a difficult path to take and you should be pleased with the outcome even if it is not what you hoped for. For those candidates who did not achieve a pass, you should be able to increase your marks by thorough revision of the whole course and by better exam techniques.

I will make some comments on individual questions below, but too many marks were missed by not answering every aspect of the question. This is a basic error that can be overcome by highlighting, on the question paper, every element that you need to address and making sure that you do so.

Section A

Q1 Every candidate attempted this question.

This was a basic contract law question that I expected candidates to be able to answer well. Although the majority did achieve a pass, there were a few candidates who did not provide sufficient clarity regarding the difference between an offer and an invitation to treat.

I wanted to see a clear explanation that an offer is an undertaking by an offeror that they will be bound by their offer if it is accepted. Whereas an invitation to treat indicates a willingness to receive offers.

The cases, including Fisher v Bell, Partridge v Crittenden and the Boots case were generally used well to illustrate an invitation to treat. However Carboloc Smoke Ball was not always explained well enough to make it clear that its precise detail made it an offer to the world at large and, therefore, it was a very different to the formation of a bilateral contract.

Q2 Surprisingly, this was not a popular question which was only answered by six candidates. Those that did attempt the question achieved strong marks, suggesting it was very much part of their day to day work.

There were three strands that needed to be addressed:

Say what intelligence is
List the potential sources that are used
Say how this helps Trading Standards

Q3 Ten candidates attempted this question which offered readily achievable marks if the basics of ADR had been studied.

Strangely, the discussion of the benefits and disadvantages was handled better than the description of the process itself. The steps that a trader has to take if they are unable to resolve a dispute are:

Advise the consumer that their dispute is deadlocked
Provide the details of an ADR Scheme
State whether or not they are obliged, or willing (or not), to participate in the ADR process.

The discussion element provided easy pickings for those who knew about ADR.

Q4 Thirteen candidates answered this question.

Generally speaking, the question was not answered very well. Answers were stronger when discussing how/when implied terms are implied into contracts. However, there was little reference to *Olley V Marlborough Court Hotel* and *Thornton v Shoe Lane Parking* that considered whether or not written terms actually formed part of the contract - there was a hint in the question.

Q5 Only two candidates attempted to answer this question and, sadly, it was not answered well.

Unfair terms are a big area to cover but it meant that marks could be achieved if the key points were covered. A good answer would include:

- Unfair terms are not binding on the consumer, but the contract remains in place
- An explanation of the so-called 'blacklisted' terms
- An overview of the grey-listed' terms in Schedule 2
- The general test of fairness
- When core terms cannot be assessed for fairness
- Contract terms must be transparent
- The civil enforcement role of Trading Standards, the Competition and Markets authority and other regulators.

Q6 Eleven candidates answered this question. It was disappointing that only four candidates achieved a pass mark in a topic that is a key element of the syllabus.

Satisfactory quality is, probably, the most used implied term under the Consumer Rights Act 2015 and it was surprising how unfamiliar candidates were with its definition and practical application.

A good answer would have included:

- The definition of satisfactory quality and its reasonable person test - an objective assessment of quality
- The factors that help to define satisfactory quality
- The situations where satisfactory quality will not apply
- The use of practical examples.

Section B

Q7 Fifteen candidates attempted these questions and most achieved a pass. It certainly appears that candidates were more comfortable with contract law than they were with the Consumer Rights Act 2015.

The challenge was to address all of the issues raised in the question with reference to contract law, including relevant case law.

One point that was missed was that even if the exclusion clauses were incorporated, through subsequent visits to the car park, those terms would still be excluded by the Consumer Rights Act 2015 as blacklisted terms.

Angus would have a claim in negligence, as well as a breach of contract due to the failure to provide the parking service with reasonable care and skill.

Most candidates identified that Freya had probably entered into a unilateral contract (Carlill v Carbolic Smoke Ball Co). Sadly, easy marks were lost by not considering what she could claim - the price of buying a similar handbag, possibly the wasted costs if she had hired her Mary Poppins costume. Damages for distress were also mentioned but would probably be less likely to succeed.

Q8 Twelve candidates attempted this question, the results were either outstanding or very poor.

This was a straightforward question regarding the supply of goods which were faulty, by a trader to a consumer. Candidates did not need to look beyond the goods provisions of the Consumer Rights Act 2015 for their answer.

A good answer could take the following approach:

Identification for the contracting parties and the applicable law

Identification of the relevant rights - satisfactory quality - how this is defined and applied to the facts

Remedies - short-term right to reject or repair/replace - explain how these would be used

What would this mean in practice for Marcus - he has a choice whether to reject or accept the repairs, reserving his right to reject if the repairs fail.

Congratulations to the student who pointed out that towing the caravan at no more than 50mph would not cause hardship because that was the legal maximum speed for towing anyway. This was not put in as a trap and I am not sure what the legal limit is in France, where Marcus was planning to go on holiday. But well done anyway!

There is one point that does need clarification for some candidates. A towing caravan is not a 'Motor Vehicle' as defined in the Consumer Rights Act. Therefore, deductions for use that are different for motor vehicles would not be relevant. However, as Marcus would use his short-term right to reject, no deduction for use would have been allowed, even if it had been a motor vehicle. The difference, for motor vehicles, only applies to the final right to reject.

Q9 Only seven candidates attempted this question, the majority of whom passed and were clearly comfortable applying these different legal concepts to the scenario.

Most marks were allocated for considering Ranjit's rights and remedies under the Consumer Rights Act 2015, sections 49 to 52. In the real world, this would most likely be the route that a consumer would use.

Misrepresentation was most appropriate for Brian's claims regarding his Trusted Trader Scheme membership. Candidates needed to define what would amount to a misrepresentation and the remedies available.

Finally, negligence would provide the only remedy against the DIY Store, albeit a very weak one. Candidates were expected to describe the elements of a negligence claim.

Q10 Only seven candidates attempted this question with only one managing to achieve a bare pass.

This question explored the basics of our legal system and it was disappointing how few candidates could describe the roles of the Courts and the routes for appeal in any detail.

The description of the purpose of civil and criminal law, burdens of proof and making a comparison between the two systems should have presented the opportunity to gain good marks, which was not taken.