

## Examiner's report

### CTSI Professional Competency Framework

#### Stage 1: Unit 1 Regulatory Environment and Enforcement Examiner's Report September 2020

##### General

First of all, congratulations to every candidate who sat this paper. With the year that you have faced with, undoubtedly, personal and professional pressures you have done so well just to make it to the examination room. You all deserve to pass on your effort alone, but I am afraid that is not the way that the examination process works.

I will make some comments on individual questions below, I hope these will be helpful to future candidates by indicating what I expect in this examination. After the last examination, I said "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." Once again, I have seen too many students missing readily available marks by not addressing the question properly. Take time to highlight the points that you need to cover, we write our questions to help you with that, and then address all of those points. Also, although I might be impressed by legal principles that you have referred to, or cases that you have cited, you will not gain marks if they do not answer the actual question.

##### Section A

**Q1** Eleven out of fourteen candidates attempted this question.

This question asked candidates to demonstrate their knowledge of the rules of rejection, found in the Consumer Rights Act 2015. This required explanation of the short-term right to reject, available for the first 30 days (unless the goods are perishable), and how consumers can ask or agree to a repair or replacement within that period whilst stopping the 30-day clock by doing so.

Following on, I expected an explanation of when a price reduction, or the final right to reject could be used and how long consumers would be entitled to a full refund (6 months) and how this could be reduced thereafter. The different rules for motor vehicles also needed to be covered.

Too many candidates wasted time explaining what satisfactory quality meant, which was not required by the question.

**Q2** This was not a popular question, despite requiring a straightforward explanation of product liability law guided by the question which indicated the points that were to be covered.

The two candidates who did attempt this question both earned high marks.

**Q3** It was disappointing that only three candidates answered this question, which covered key elements of the syllabus, namely contract law. With reference to case law, I would have expected the following to have been covered:

- A website is normally an invitation to treat
- Consumers normally make an offer when they place the goods in their virtual basket and press the 'buy now' button
- Acceptance takes place at the time of taking payment, or dispatch, this is likely to be defined in the website's terms and conditions
- The contract, for a website purchase, involves the exchange of money for goods, consideration in English law
- The parties must intend to enter into the contract, which can be taken as read in most website purchases.

**Q4** This question was only attempted by five candidates.

This was a reasonably straightforward question for candidates who had revised the Consumer Rights Act 2015. Quite simply, candidates needed to make reference to the four implied terms:

- Reasonable care and skill
- Information given about the trader or their service
- Reasonable price, unless paid, fixed by the contract or any s.50 statement
- Reasonable time, unless fixed by the contract or any s.50 statement.

Most candidates missed the new (in 2015) section 50 term regarding information provided by the trader about themselves or their service, which the consumer has taken account of when entering into the contract.

**Q5** This proved a very popular question which was answered well by the eleven candidates who attempted it.

It was refreshing to see how many candidates were clear about what was expected of them as regulators.

**Q6** This was another very popular question, with most of the ten candidates who answered it obtaining good marks. The points required to be covered were clearly set out in the question and marks were readily obtained if they were covered properly.

## Section B

**Q7** This was a very well answered question with most of the ten candidates who attempted it passing conformably. Most combined their legal knowledge with a practical application of the facts.

There was strong evidence to suggest that the fridge was not of satisfactory quality but was the dent and rust something that Edna should have seen?

Remedies were considered fairly well, Edna was within the 30-day period to exercise her short-term right to reject. Some candidates did not consider that she also had the option to ask or agree to a repair or replacement and what this meant with regard to still having her short-term right to reject if that failed.

Well done to the candidates who spotted that the exclusion clause on the back of the receipt was unlikely to form part of the contract, so was not binding. Other candidates got to the same position by stating that this was a blacklisted term (or notice). Either way, Trading Standards could speak to the trader, and possibly take further action, against for the trader for attempting to rely on this exclusion clause.

Finally, apologies that Edna changed into Mary (just once) during the question. This should not have happened but did not impact on any answers. Thank-you to the candidate who pointed this error out in their answer.

**Q8** Considering how important the Intelligence Operating Model is to the operation of a modern Trading Standards Service, this was not a popular question and was only attempted by five candidates.

Candidates were able to explain what intelligence is and give plenty of examples of where it comes from. Not so many were able to explain how it was assessed.

The local, national and regional roles were explained in general terms, but not so much was said about this was used through tasking groups. There were some good responses regarding the benefits of the model.

Finally, the question did ask candidates to prepare a briefing paper, but no-one actually formatted their answer for the audience identified. Marks were not allocated, this time, for doing this but candidates reading this report as part of their preparations for future examinations might like to bear this in mind.

**Q9** This question, focussing on the basics of contract law, was not well answered by the six candidates who attempted it. The main omission was that candidates did not apply contract law to all of the elements of the question.

Taking part, a) as an example, most candidates identified that the advertisement was an invitation to treat and did cite relevant case law. However, this question moved on with Mark making an offer of £20 to buy the TV, which was rejected by the seller who made a counter-offer of £180 which Mark rejected. Every aspect had to be considered to enable you to explain where Mark stood, contractually, at the end of the story.

Most candidates dealt correctly with part b) which explored the principal that silence cannot be prescribed as a means of acceptance [Felthouse v Brindley].

Part c) presented a contract that Sam had agreed to, and would have been deemed to have read and understood the terms and conditions. Therefore, in the absence of any contractual or statutory right to cancel, he would be breaching the contract by attempting to cancel it. Part 2 Consumer Rights Act 2015 needed to be considered with regard to the term stating that the deposit would not be returned - was this a fair reflection of the damages that the retailer had suffered?

Questions like this do require a thorough examination of every step that you have been presented with.

**Q10** This question, attempted by seven candidates required an explanation of Part 2 Consumer Rights Act 2015. Too much time was wasted citing general contract case and discussing the difference between terms and conditions, which this question did not require.

Best marks were obtained by those candidates who had prepared for this type of question. The question required candidates to cover the following:

- a) Blacklisted terms, including negligence liability  
Schedule 2 - grey-listed terms  
The fairness test  
Exclusion of certain core terms from the fairness test
- b) Unfair terms cannot be enforced, by the trader, but the contract continues
- c) Bodies who can take regulatory action  
What action they can take - Schedule 3 Consumer Rights Act 2015.