

Mark Scheme for June 2012

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This mark scheme is published as an aid to teachers and students, to indicate the requirements of the examination. It shows the basis on which marks were awarded by examiners. It does not indicate the details of the discussions which took place at an examiners' meeting before marking commenced.

All examiners are instructed that alternative correct answers and unexpected approaches in candidates' scripts must be given marks that fairly reflect the relevant knowledge and skills demonstrated.

Mark schemes should be read in conjunction with the published question papers and the report on the examination.

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Annotations used in the detailed Mark Scheme

Annotation	Meaning
	Tick
	Cross
	Benefit of doubt
	Benefit of doubt not given
	Repeat
	Irrelevant
	Omission mark
	Level 1
	Level 2
	Level 3
	Expansion of a point
	Development of point
	Vague
	Not answered question

Question		Answer	Marks	Guidance
1	(a)	<p>Assessment Objective 1 Candidates will identify up to three of the following:</p> <p>a. Statement of material fact b. Made by one party to a contract to the other party to the contract c. During negotiations leading up to a contract d. Intended to induce or entice the other party to enter contract e. Not intended to be a binding obligation f. Untrue, lied or incorrectly stated</p>	3	1 mark for each correct element identified (maximum 3 marks)
	(b)	<p>Assessment Objective 2 Candidates will tick boxes (i), (iv) and (v)</p>	3	1 mark for each correct item identified (maximum 3 marks) Award zero marks for additional boxes ticked.
Total			6	

Question		Answer	Marks	Guidance
2	(a)	<p>Assessment Objective 1 Candidates will identify as follows:</p> <p>(i) Reasonable care and skill (ii) Carried out within a reasonable time (iii) Payment of reasonable amount if no price agreed beforehand</p>	3	<p>1 mark for each correct type of implied term identified (maximum 3 marks) (i) Needs both care and skill</p> <p>NB if just section numbers are used - full credit can be given</p>

Question		Answer	Marks	Guidance	
				Content	Levels of Response
	(b)	<p>Assessment Objective 2 Candidates will explain the following: (i) Implied term is breached</p>	9	<p>(i)</p> <ul style="list-style-type: none"> Bob should be able to expect that Andrea is competent to do the job as she is a professional architect 	For each of the three scenarios

Question			Answer	Marks	Guidance	
					Content	Levels of Response
		(ii) Implied term is not breached			<ul style="list-style-type: none"> Bob is paying for Andrea's services and they have a contract as he is paying for her services Andrea should be able to carry out the calculations in a professional way and get them right. Andrea should be able to use reasonable care and skill to carry out the calculations in a professional manner 	<p>give credit as follows:</p> <p>L3: 3 marks for a number of points or good reasoning</p> <p>L2: 2 marks for identifying 2 basic points or adequate reasoning</p> <p>L1: 1 mark for identifying 1 basic point or limited reasoning</p>
		(iii) Implied term is breached			<p>(ii)</p> <ul style="list-style-type: none"> Yves has given an estimate of the time the job will take He should be given some flexibility if he does not know how long the fabric will take to arrive Dorothy should be able to expect the work to be done in reasonable time, however receiving the dress on the day can be regarded as unreasonable even though she could still wear it. <p>(iii)</p> <ul style="list-style-type: none"> Edward has not asked for an estimate of the cost and George has not provided one The price is double what Edward's neighbour paid and George's silence has led Edward to believe 	<p>0 marks – no response or no response worthy of credit</p> <p>(maximum 9 marks)</p>

Question			Answer	Marks	Guidance	
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					<p>this is around the price he will pay</p> <ul style="list-style-type: none"> As no price has been agreed Edward should pay a reasonable price and it seems likely that £1,000 is too much. Credit reference to not having to pay the full amount <p>NB no credit to be given for remedies</p>	

Question			Answer	Marks	Guidance	
					Content	Levels of Response
	(c)		<p>Assessment Objective 3 Candidates will discuss any two of the following:</p> <ul style="list-style-type: none"> If an implied term is inserted a seller is bound even though it does not appear in the contract This is so even if the seller would prefer it was not included Implied terms are also conditions This means that if there is a breach the consumer can get compensation A consumer can also return the goods and get their money back Courts have been generous in the way they define implied terms If goods do not fit their description the consumer has a remedy. Use of an example. Consequence for the seller in terms of standards. 	6	<p>Credit should be given for both breadth and depth</p> <p>Using suitable examples attracts some credit</p> <p>Credit for remedies to be given here</p>	<p>For each way discussed:</p> <p>L3: 3 marks for further development of the point</p> <p>L2: 2 marks for the point developed</p> <p>L1: 1 mark for the point identified</p> <p>0 marks – no response or no response worthy of credit</p> <p>(maximum 6 marks)</p>

Question			Answer	Marks	Guidance	
					Content	Levels of Response
			<ul style="list-style-type: none"> If goods are not of satisfactory quality the consumer has a remedy Use of an example. Consequence for the seller in terms of standards. If goods are not fit for purpose the consumer has a remedy Use of an example. Consequence for the seller in terms of standards. Any other relevant comment. 			
			Total	18		

Question		Answer	Marks	Guidance
3	(a)	<p>Assessment Objective 1 Candidates will identify up to three of the following defences:</p> <ul style="list-style-type: none"> Product complies with statutory or EU obligations Defect did not exist when product supplied by defendant Product not supplied in the course of a business Defendant can show they did not supply product State of technical/scientific knowledge such that defendant could not have known about defect 	3	<p>1 mark for each correct defence identified (maximum 3 marks)</p> <p>Credit reference to warning signs and labels</p>
	(b)	<p>Assessment Objective 2 Candidates will answer as follows:</p> <p>(i) YES</p> <p>(ii) NO</p> <p>(iii) NO</p> <p>(iv) YES</p>	6	<p>1 mark each for each correct answer (maximum 6 marks)</p> <p>Accept 'y' or 'n' as answers</p> <p>No credit for yes and no in the same box</p>

Question		Answer	Marks	Guidance
		(v) NO (vi) YES		
	(c)	Candidates will identify up to three of the following elements: <ul style="list-style-type: none"> Duty of care owed by manufacturer Breach of duty by manufacturer Manufacturer causes foreseeable loss/foreseeable damage results from manufacturing breach. 	3	Assessment Objective 1 1 mark for each correct identification (maximum 3 marks) Candidates must make reference to foreseeability or damage resulting from breach
	(d)	Candidates will identify the following: <ul style="list-style-type: none"> (i) Supplier (ii) Wholesaler (iii) Manufacturer (iv) Repairer or fixer (v) Assembler (vi) Retailer or shopkeeper 	6	Assessment Objective 3 1 mark for each identification of a type of defendant (maximum 6 marks) (iii) Do not accept producer (v) Do not credit producer (vi) Do not accept seller
Total			18	

Question		Answer	Marks	Guidance
4	(a)	Assessment Objective 1 Candidates will insert from the list as follows in this order: <ul style="list-style-type: none"> fact invalid enforceable or valid 	3	1 mark each for each correct answer (maximum 3 marks)
	(b)	Assessment Objective 1 Candidates will identify up to three of the following reasons: <ul style="list-style-type: none"> Ben has signed a form before which may mean that any exclusion clause has been incorporated when he 	3	1 mark for each reason identified (maximum 3 marks) Do not accept reference to it was unsigned

Question		Answer	Marks	Guidance
		<p>does not sign this time, based on previous dealings</p> <ul style="list-style-type: none"> • If MechanicsRus wanted the clause to be valid it would need to be clear and unambiguous • As they have not said they would not be liable even if they were negligent they will not be able to rely on the exclusion clause. 		Lack of Care or similar not sufficient. Credit reference to negligence.
	(c)	<p>Assessment Objective 1 Candidates will tick (i), (iii) and (vi).</p>	3	<p>1 mark for each correct identification (maximum 3 marks) Award zero marks for additional boxes ticked</p>

Question		Answer	Marks	Guidance	
				Content	Levels of Response
	(d)	<p>Assessment Objective 3 Candidates will discuss any three of the following:</p> <ul style="list-style-type: none"> • Identification of general principles relating to exclusion clauses re the protection of consumers • Ability to sue or terminate contract but all must be based on lack of reasonableness of the clause • Therefore the seller has a responsibility to ensure reasonableness of clauses • There can be no exclusion of liability for death or personal injury caused by the seller's negligence • This is important because it means a consumer can always get a remedy if they are injured by a defective service or product 	9	<p>Credit should be given for both breadth and depth</p> <p>Using examples attracts some credit</p> <p>If only one reason is discussed than maximum top L1.</p> <p>To get into L3 overall at least two of the reasons discussed must each be in L3.</p>	<p>Candidates will score as follows:</p> <p>L3: 7-9 marks – points explained with good reasoning and with effective communication through discussion. The response is well organised, structured, with few errors in grammar, punctuation and spelling.</p> <p>L2: 4-6 marks – points made with some elaboration and adequate communication. The response is adequately organised, structured and with some errors of spelling, punctuation and grammar.</p> <p>L1: 1-3 marks – basic points made with basic communication. The response lacks organisation, structure and accuracy of spelling, punctuation and grammar.</p>

Question			Answer	Marks	Guidance	
					Content	Levels of Response
			<ul style="list-style-type: none"> • This should encourage sellers to be more careful as they do not want to pay out compensation or get a bad name • There can be no exclusion of liability based on a guarantee if there are defects caused by negligence in manufacture or distribution of goods • This is important because it makes guarantees more meaningful which protects consumers • This should encourage manufacturers to take more care • There can be no exclusion of liability for breaches of implied conditions relating to descriptions, satisfactory quality or fitness for purpose • This is important as otherwise it would be too easy for sellers to exclude a wide range of liabilities • Having liability means that consumers have a remedy when the goods they buy are defective • There can be no exclusion of liability for services either and goods provided as part of a service • This keeps consumers safer • It also forces providers of services to do a good job and to use good quality materials 			0 marks – no response or no response worthy of credit

Question	Answer	Marks	Guidance	
			Content	Levels of Response
	• Any other relevant comment.			
	Total	18		

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