

Mark Scheme for June 2011

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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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Question		Expected Answer	Mark	Rationale/Additional Guidance
1	(a)	<p>ASSESSMENT OBJECTIVE 1</p> <p>Candidates will identify the following:</p> <p>Element 1: Duty of care owed by the defendant to the claimant</p> <p>Element 2: Breach of duty</p> <p>Element 3: Foreseeable Damage suffered by the claimant caused by the defendant's breach</p>	[3]	<p>1 mark each for each correct answer</p> <p>[maximum 3 marks]</p>
	(b)	<p>ASSESSMENT OBJECTIVE 3</p> <p>Candidates will answer as follows:</p> <p>(ii) TRUE</p> <p>(iii) TRUE</p> <p>(iv) TRUE</p>	[3]	<p>1 mark for each correct identification</p> <p>[maximum 3 marks]</p> <p>Award marks if ticks are used in place of "true"</p>

Question	Expected Answer	Mark	Rationale/Additional Guidance
2 (a)	<p>ASSESSMENT OBJECTIVE 1</p> <p>Candidates will identify as follows:</p> <p>Situation (i) That where goods are sold by description that the goods must correspond to the description given to them</p> <p>Situation (ii) That the goods must be of satisfactory quality (which includes durability)</p> <p>Situation (iii) That the service should be carried out in a reasonable time</p>	[3]	<p>1 mark for each correct type identified</p> <p>[maximum 3 marks]</p> <p>(ii) Also acceptable to say “below standard” or “good quality”, “fit for purpose”</p> <p>(iii) credit alternative phrasing such “breach of time taken”</p>
(b)	<p>ASSESSMENT OBJECTIVE 2</p> <p>Candidates will explain the following:</p> <p>Situation (i)</p> <ul style="list-style-type: none"> • The car was described as mechanically perfect • It was clearly not because the wheels have collapsed and there is a problem with the engine, meaning it is not mechanically perfect. • Therefore there is a breach of contract and the man can have his money back unless he caused the problems <p>Situation (ii)</p> <ul style="list-style-type: none"> • The trainers must be of satisfactory quality – which includes durability for a reasonable time • The trainers have only been worn once so they are not durable • Therefore there is a breach of contract and the boy is entitled to his money back 		<p>Annotate using levels; level 1, level 2, level 3</p> <p>For each situation give credit as follows:</p> <ul style="list-style-type: none"> • 0 marks No response or nothing worthy of credit • 1 mark Identifies a relevant issue/or makes any valid point • 2 marks Identifies a relevant issue with some elaboration • 3 marks Reaches a valid, reasoned conclusion <p>[maximum 9 marks]</p> <p>(i) Credit alternative remedy of getting car fixed</p> <p>(ii) Credit correct alternative phrasing</p> <p>Credit alternative remedy of an exchange</p>

Question	Expected Answer	Mark	Rationale/Additional Guidance
	Situation (iii) <ul style="list-style-type: none"> • The wall should have been completed in a reasonable time but is not completed in two years • Other walls have been completed in a couple of days so it seems that two years is not a reasonable time • The woman need not pay for the service 	[9]	(iii) Credit alternative remedies such as getting the wall built by someone else, quantum meruit, paying a reduced fee because the work has taken too long. A claim in compensation would not be relevant.
(c)	<p>ASSESSMENT OBJECTIVE 3</p> <p>Candidates will discuss any <u>two</u> of the following:</p> <p>Reasonable care and skill:</p> <ul style="list-style-type: none"> • Service must be provided in a safe and professional manner, meeting a common standard and to a specialist level if required - therefore the consumer can expect the service to be professional, safe and to expected standards - since they can check on providers they are protected, as are other people, and there is a clear route to a remedy <p>Reasonable time:</p> <ul style="list-style-type: none"> • If no mention of time is mentioned only a reasonable time applies – so the consumer does not have to accept inconvenience past a standard reasonable point and they can possibly get someone else to finish the work and charge the original service provider <p>Reasonable payment:</p> <ul style="list-style-type: none"> • If no price is mentioned before the contract then the consumer only has to pay a reasonable price – this means that a business is more likely to state a price which protects consumers as they can shop around and not pay an extortionate price 	[6]	<p>For each way give credit as follows:</p> <ul style="list-style-type: none"> • 0 marks No response or nothing worthy of credit • 1 mark Identifies a relevant issue/or makes any valid point • 2 marks Identifies a relevant issue with some elaboration • 3 marks Develops a discussion on a relevant issue <p>[maximum 6 marks]</p>

Question		Expected Answer	Mark	Rationale/Additional Guidance														
3	(a)	<p>ASSESSMENT OBJECTIVE 1</p> <p>Candidates will identify up to <u>three</u> of the following:</p> <ol style="list-style-type: none"> 1 Goods must reach consumer in the form they left the manufacturer. 2 No chance of examining goods between manufacturer and consumer. 3 Manufacturer knows that not taking care puts consumer at risk of harm. 	[3]	<p>[maximum 3 marks]</p> <ol style="list-style-type: none"> 1 Credit reference to right or correct or original packaging as BOD 3 Link to foreseeability of damage can be credited 														
	(b)	<p>ASSESSMENT OBJECTIVE 2</p> <p>Candidates will insert <u>A</u> or <u>B</u> as follows:</p> <table style="margin-left: 20px;"> <thead> <tr> <th>Stage</th> <th>A or B</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>B</td> </tr> <tr> <td>2</td> <td>B</td> </tr> <tr> <td>3</td> <td>A</td> </tr> <tr> <td>4</td> <td>B</td> </tr> <tr> <td>5</td> <td>A</td> </tr> <tr> <td>6</td> <td>B</td> </tr> </tbody> </table>	Stage	A or B	1	B	2	B	3	A	4	B	5	A	6	B	[6]	<p>1 mark for each correct identification</p> <p>[maximum 6 marks]</p>
Stage	A or B																	
1	B																	
2	B																	
3	A																	
4	B																	
5	A																	
6	B																	

Question	Expected Answer	Mark	Rationale/Additional Guidance
(c)	<p>ASSESSMENT OBJECTIVE 1</p> <p>Candidates will identify up to <u>three</u> of the following definitions:</p> <ol style="list-style-type: none"> 1 Manufacturer (including assembler of component parts and producer of raw materials used to make goods) 2 Extractor of minerals 3 Person carrying out process which adds to the product 	[3]	<p>[maximum 3 marks]</p> <ol style="list-style-type: none"> 1 Credit alternative definition of someone who makes goods, someone who puts the product together <p>Only credit manufacturer or assembler – not both.</p>
(d)	<p>ASSESSMENT OBJECTIVE 2</p> <p>Candidates will answer as follows:</p> <ol style="list-style-type: none"> (i) Rebecca will not be able to make a claim because the box says that the animals are not suitable for a child as young as Alex. Although Rebecca thinks Alex is old enough she should follow the clear guidance given on the box. (ii) Matt will not be able to make a claim because the way he has used the product is not one which is within the range of normal use. Microwaves are to cook food and not to dry laundry. (iii) Keisha will be able to make a claim because the label says the scarf can be hand washed and Keisha has followed the instructions. 	[6]	<p>1 mark for each correct explanation as to whether there will be a defence and 1 mark for the reasoning used.</p> <p>[maximum 6 marks]</p> <ol style="list-style-type: none"> (ii) Valid alternative reasoning: Matt chose to put his shirt in the microwave

Question		Expected Answer	Mark	Rationale/Additional Guidance
4	(a)	<p>ASSESSMENT OBJECTIVE 1</p> <p>Candidates will insert from the list as follows in this order:</p> <ul style="list-style-type: none"> • exclusion clauses • businesses • consumer 	[3]	<p>1 mark for each word correctly inserted</p> <p>[maximum 3 marks]</p> <p>NB Exclusion on its own cannot be rewarded</p>
	(b)	<p>ASSESSMENT OBJECTIVE 2</p> <p>Candidates will explain as follows:</p> <ul style="list-style-type: none"> • The Act does not allow exclusion clauses exempting liability for death or injury caused by negligence • Therefore the clause is invalid • Therefore it is unenforceable against Jordan who will be able to claim compensation for his injuries 	[3]	<p>For the issue explained give credit as follows:</p> <ul style="list-style-type: none"> • 0 marks No response or nothing worthy of credit • 1 mark Identifies a relevant issue/or makes any valid point • 2 marks Identifies a relevant issue with some elaboration • 3 marks Reaches a valid, reasoned conclusion <p>[maximum 3 marks]</p> <p>Award one mark only for statement to the effect that "Jordan can make a claim" But annotate as BOD.</p>
	(c)	<p>ASSESSMENT OBJECTIVE 1</p> <p>Candidates will identify the <u>three</u> features as follows:</p> <ul style="list-style-type: none"> • One party does not make the contract in the course of a business • The other party does make the contract in the course of a business • The goods are of a type normally bought for private use (or credit reference to quantity) 	[3]	<p>1 mark for each correct feature identified</p> <p>[maximum 3 marks]</p> <p>If a candidate identifies all three features (Agreement (could also be offer and acceptance), Intention and Consideration) required to create a contract, then award one mark overall. (Tick to be placed on bottom line)</p>

Question	Expected Answer	Mark	Rationale/Additional Guidance
(d)*	<p>ASSESSMENT OBJECTIVE 3</p> <p>Candidates will discuss any <u>three</u> of the following:</p> <ul style="list-style-type: none"> • Judges have created controls on exclusion clauses to stop businesses taking advantage of consumers. • Judges will not enforce an exclusion clause which has not been incorporated into the contract. This means the party subject to the clause must have known about it at the time of contracting and the contract should be signed. Something brought to the attention of the party after the contract is formed is not incorporated and this protects consumers. • Judges will not enforce an exclusion clause unless the person inserting the clause has sufficiently brought it to the attention of the party subject to it. This could be by printing the clause in red ink with a red hand pointing to it and this need for clarity protects consumers. • Judges will allow a previous course of dealing on the same terms as evidence of knowledge of the clause but only if there has been a consistent course of dealing as this shows that the consumer really knew the terms they were contracting on. • Judges have said that the party inserting the clause into the contract has the burden of bringing it to the attention of the other party before the contract is signed if they then try to rely on it to avoid liability. • Judges will not allow an exclusion clause if it is ambiguous. A business must phrase their terms very precisely and if they want to avoid liability for damage caused by negligence any exclusion must be stated clearly to protect consumers against unscrupulous businesses. 		<p>For each issue above give credit as follows:</p> <ul style="list-style-type: none"> • 0 marks No response or nothing worthy of credit • 1 mark Identifies a relevant issue/or makes any valid point • 2 marks Identifies a relevant issue with some elaboration • 3 marks Develops a discussion on a relevant issue <p>[maximum 9 marks]</p> <p>First bullet point only attracts one mark</p> <p>Credit use of examples that show how the judges are protecting consumers – for example reference to tickets, receipts or things written on the back of hotel doors.</p> <p>Credit recognition of judicial control as level one and then example or elaboration as levels 2 and 3 as appropriate e.g. “..... case law such as that in <i>Olley</i> set out that the back of the door was not acceptable to display exclusion clauses (level 2) because at the time of arrival the consumers were not aware of them before they entered the contract..” (level 1)</p>

Question	Expected Answer	Mark	Rationale/Additional Guidance
	<ul style="list-style-type: none">• Judges have a rigid view of less straightforward transactions and less obvious contractual documents, including ticket cases and contracting with vending machines. As the consumer cannot negotiate terms it would be unfair if a business can avoid liability.• Judges will not allow a business to try and rely on an exclusion clause in another document given to the consumer, even if this is before the contract is performed, but they have not done enough to bring the other clause to the consumer's attention. This protects the consumer.• Judges will not allow an exclusion clause even when the contract has been signed if the consumer has enquired about it and the seller has misrepresented what it covers and this protects the consumer.	[9]	

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