

Mark Scheme for June 2010

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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 Answers	Marks	Additional Guidance
1	(a)	<p>For a contract to be enforceable it must have been validly formed.</p> <p>Identify the <u>three</u> essential elements for the valid formation of a contract.</p> <p>ASSESSMENT OBJECTIVE 1</p> <p>Candidates will identify the following:</p> <ul style="list-style-type: none">• Agreement (credit offer and acceptance)• Consideration• Intention to create legal relations (credit an intention that the agreement should be legally enforceable) <p>1 mark each for each correct answer (maximum 3 marks).</p>	[3]	

Question	Expected Answers	Marks	Additional Guidance
(b)	<p>Negligence can only be claimed when the defendant owes a duty of care to the claimant, has breached that duty and has caused the claimant damage.</p> <p>Write <u>true</u> next to the <u>three</u> statements below which are accurate descriptions of these rules on claiming in negligence.</p> <p>Candidates will insert <u>true</u> as follows:</p> <p>A defendant owes a duty of care to someone he could foresee would be harmed by his negligent acts. TRUE</p> <p>A defendant owes a general duty to the whole world. (FALSE)</p> <p>A breach of duty means falling below the standard of care that is appropriate to the duty the defendant owes. TRUE</p> <p>The standard of care is usually measured against the standards of 'the reasonable man'. TRUE</p> <p>The damage need not be caused by the defendant as long as the defendant has breached his duty. (FALSE)</p> <p>A claimant can recover compensation from the defendant for any damage caused, however unforeseeable it is. (FALSE)</p> <p>1 mark for each true statement identified (maximum 3 marks).</p>	[3]	
	Total	[6]	

Question	Expected Answers	Marks	Additional Guidance
2	<p>Read each of the following <u>three</u> situations and complete activity a) and activity b) which follow them.</p> <p>(i) Sarah bought a new pair of jeans from a clothes shop. The seams split down both legs the first time that Sarah wore the jeans so that she cannot use them. The clothes shop is refusing to give Sarah her money back.</p> <p>(ii) Elaine contracted with a building firm to build an extension on the back of her kitchen for £20,000. The builders carelessly failed to put in adequate foundations and as a result the extension leans at an angle to the house. Another builder has told Elaine that the extension is likely to fall down. Elaine does not want to pay the original builder.</p> <p>(iii) Martin bought a tent which was described as ‘suitable for all weather conditions’. The first time Martin used the tent rain poured in through the canvas. Martin wants his money back.</p> <p>(a) Identify which statutory implied term from either the <u>Sale of Goods Act 1979</u> or the <u>Supply of Goods and Services Act 1982</u> is involved in each of the above situations.</p> <p>ASSESSMENT OBJECTIVE 1</p> <p>Candidates will identify as follows:</p> <p>(i) Sarah: That the goods are of satisfactory quality (which includes durability).</p> <p>(ii) Elaine: That the service should be carried out with reasonable skill and care.</p>		<p style="text-align: center;">Sarah Require Satisfactory Quality Not fitness for purpose</p> <p style="text-align: center;">Elaine Reasonable care and skill</p> <p style="text-align: center;">Martin Requires “as described” or similar</p>

Question	Expected Answers	Marks	Additional Guidance
	<p>(iii) Martin: That where goods are sold by description that the goods must correspond to the description given to them.</p> <p>1 mark for each correct type identified (maximum 3 marks).</p>	[3]	
(b)	<p>Explain whether the implied term has been breached in each situation (i), (ii) and (iii).</p> <p>ASSESSMENT OBJECTIVE 2</p> <p>Candidates will explain the following:</p> <p>(i) Sarah:</p> <ul style="list-style-type: none"> • Sarah is entitled to jeans of satisfactory quality – which includes durability for a reasonable time • Sarah’s jeans are not fit for their purpose as they have split • Therefore there has been a breach of the implied term. <p>(ii) Elaine:</p> <ul style="list-style-type: none"> • The extension should have been built with reasonable care and skill • Elaine’s extension is leaning and likely to collapse because the job was not done properly. • Therefore there is a breach of the implied term. 		<p>Sarah Credit fitness for purpose</p>

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	<p>(iii) Martin:</p> <ul style="list-style-type: none"> • The tent was described as suitable for all weather conditions • Martin's tent was not waterproof nor was it fit for the purpose • Therefore there is a breach of the implied term. <p>For each of the three scenarios above give credit as follows:</p> <ul style="list-style-type: none"> • 1 mark for identifying 1 basic point or limited reasoning • 2 marks for identifying 2 basic points or adequate reasoning • 3 marks for a number of points or good reasoning. 	[9]	
(c)	<p>The definition of 'satisfactory quality' under the <u>Sale of Goods Act 1979</u> includes <u>safety</u> and <u>durability</u>.</p> <p>Discuss how these <u>two</u> definitions help to protect consumers.</p> <p>ASSESSMENT OBJECTIVE 3</p> <p>Candidates will discuss any of the following on safety:</p> <ul style="list-style-type: none"> • It means that the consumer can gain compensation for injuries caused. • It gives consumers confidence when buying goods • It may deter sellers from selling unsafe goods. • It may help to protect the consumer from injuries caused by unsafe goods. 		<p>If an example illustrates the point in a relevant manner, then the comment is "developed".</p>

Question	Expected Answers	Marks	Additional Guidance
	<ul style="list-style-type: none"> • It may also help to protect people other than the consumer eg other road users in relation to an unsafe car, other people who use the unsafe goods besides the consumer. <p>Candidates will discuss any of the following on durability:</p> <ul style="list-style-type: none"> • If the goods are not durable then the consumer could have a replacement or get his money back • It may help to improve the overall quality of goods thus benefiting the consumer • It may deter sellers from selling shoddy goods • It may make the goods last longer saving the consumer money. <p>For both safety and durability 1 mark each for a basic point 2 marks each for developed comment 3 marks each for well developed comment.</p>	[6]	<p>No credit for mere definitions.</p> <p>Discussion does not have to be balanced as long as both definitions are referred to.</p>
	Total	[18]	

Question	Expected Answers	Marks	Additional Guidance
3 (a)	<p>Read the following passage and fill in the missing words from the list below.</p> <ul style="list-style-type: none"> • manufacturer • retailer • defect • goods • contract • tort <p>In a negligence claim for defective goods the claimant cannot claim from the <u>manufacturer</u> for replacement goods or for return of the price of the <u>goods</u>. This is because <u>contract</u> law would be used to recover these losses from the seller of the goods.</p> <p>ASSESSMENT OBJECTIVE 1</p> <p>Candidates will insert from the list as follows:</p> <ul style="list-style-type: none"> • manufacturer • goods • contract <p>1 mark for each word correctly inserted (maximum 3 marks).</p>	[3]	

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(b)	<p>Read the following passage.</p> <p>Mark buys a new electric drill, returns home, reads the manufacturer's instructions on how to use the drill and then plugs it in ready to drill his kitchen wall to put up a cupboard. Because of a defect in the manufacture of the drill, when Mark turns the switch on the drill explodes burning Mark's hand and face and setting fire to his work surface which will cost £200 to replace. Mark's burns are so bad that he has to go to hospital in a taxi.</p> <p>Write either <u>negligence</u> or <u>contract</u> in each box in the right hand column to state the most appropriate area of law by which to claim compensation.</p> <p>ASSESSMENT OBJECTIVE 2</p> <p>Candidates will identify the claim as <u>negligence</u> or <u>contract</u> as follows:</p> <table border="0" data-bbox="365 866 1272 1169"> <tr> <td data-bbox="365 866 1115 930">A claim for the injuries to Mark's hand and his face.</td> <td data-bbox="1115 866 1272 930">Negligence</td> </tr> <tr> <td data-bbox="365 970 1115 1034">A claim for the cost of pain killers and medication that Mark has to buy because of his injuries.</td> <td data-bbox="1115 970 1272 1034">Negligence</td> </tr> <tr> <td data-bbox="365 1074 1115 1106">A claim for the cost of a new electric drill.</td> <td data-bbox="1115 1074 1272 1106">Contract</td> </tr> <tr> <td data-bbox="365 1137 1115 1169">A claim for a replacement electric drill.</td> <td data-bbox="1115 1137 1272 1169">Contract</td> </tr> </table>	A claim for the injuries to Mark's hand and his face.	Negligence	A claim for the cost of pain killers and medication that Mark has to buy because of his injuries.	Negligence	A claim for the cost of a new electric drill.	Contract	A claim for a replacement electric drill.	Contract		
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	<p>A claim for the cost of installing a new work surface. Negligence</p> <p>A claim for the taxi fare to the hospital. Negligence</p> <p>1 mark for each type of claim correctly identified (maximum 6 marks).</p>	[6]	
(c)	<p>The <u>Consumer Protection Act 1987</u> concerns product safety. People can use the Act to recover compensation for damage caused by unsafe products. The Act can be used against almost anyone in the chain of supply and distribution but refers to specific types of defendant.</p> <p>State <u>three</u> types of defendant identified in the Act.</p> <p>ASSESSMENT OBJECTIVE 1</p> <p>Candidates will identify any <u>three</u> types of defendant as follows:</p> <ul style="list-style-type: none"> • Producers – candidates might be credited for referring to any type of producer, eg manufacturer, assembler, a producer of raw materials or components, someone abstracting minerals, or carrying out any other industrial process • Own branders • Importers • Suppliers – candidates can be credited for retailers or wholesalers <p>1 mark for each correct type of defendant identified (maximum 3 marks).</p>	[3]	

Question	Expected Answers	Marks	Additional Guidance												
(d)	<p>The <u>Consumer Protection Act 1987</u> gives consumers the chance to sue for a wide range of damage caused by defective goods. There are also some types of damage that cannot be claimed for.</p> <p>Write either <u>claim</u> or <u>no claim</u> in the right hand column next to each type of damage indicated.</p> <p>ASSESSMENT OBJECTIVE 3</p> <p>Candidates will write either '<u>claim</u>' or '<u>no claim</u>' in the right hand column as follows:</p> <table data-bbox="367 632 1189 1002"> <tr> <td>Damage to property under £275 in value</td> <td>NO CLAIM</td> </tr> <tr> <td>Death of the claimant</td> <td>CLAIM</td> </tr> <tr> <td>Damage to business property</td> <td>NO CLAIM</td> </tr> <tr> <td>Damage to the defective product itself</td> <td>NO CLAIM</td> </tr> <tr> <td>Personal injury to the claimant</td> <td>CLAIM</td> </tr> <tr> <td>Damage to personal property</td> <td>CLAIM</td> </tr> </table> <p>1 mark for each correct identification (maximum 6 marks).</p>	Damage to property under £275 in value	NO CLAIM	Death of the claimant	CLAIM	Damage to business property	NO CLAIM	Damage to the defective product itself	NO CLAIM	Personal injury to the claimant	CLAIM	Damage to personal property	CLAIM	[6]	
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	Total	[18]													

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4 (a)	<p>Give a definition of an exemption clause within a contract.</p> <p>ASSESSMENT OBJECTIVE 1</p> <p>Candidates will provide a definition including the following points:</p> <ul style="list-style-type: none"> • a term in a contract • excluding or limiting liability (either will do) • for breach of contract or negligence of the person inserting the clause (either will do). <p>1 mark for each bullet identified in the definition (maximum 3 marks).</p>	[3]	No credit for examples
(b)	<p>Read the following passage.</p> <p>Jo drove to town to go shopping. She parked in a multi-storey car park. At the barrier Jo had to take a ticket from a machine before the barrier would lift for her to be able to drive in. After shopping Jo returned to the car park and paid at the pay station. When she got back to her car it had been vandalised and the repairs cost her £2,000. When she tried to claim from the car park the manager referred her to tiny writing on the back of the ticket which read “See conditions of use of the car park”. The manager brought out a copy of the conditions from his office which read “The management accept no liability for any damage to cars or other property of users of the car park”.</p> <p>Explain why Jo will not be bound by this condition.</p> <p>ASSESSMENT OBJECTIVE 2</p> <p>Candidates will explain as follows:</p> <ul style="list-style-type: none"> • the ticket does not contain the actual exemption clause itself as it is only a receipt 		

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	<ul style="list-style-type: none"> • The clause has not sufficiently been brought to Jo's attention at the time when the contract was formed at the barrier • Therefore the condition is not incorporated into the contract. <p>1 mark for bare recognition 2 marks for some reasoning 3 marks for good reasoning (maximum 3 marks)</p>	[3]	
(c)	<p>Parliament protected consumers in the <u>Unfair Contract Terms Act 1977</u> by making certain clauses in consumer contracts invalid and unenforceable. Some other types of exemption clauses will only be valid if it is reasonable to include them in the contract.</p> <p>Identify <u>three</u> types of exemption which are invalid against a consumer under the Act.</p> <p>ASSESSMENT OBJECTIVE 1</p> <p>Candidates will identify any <u>three</u> of the following:</p> <ul style="list-style-type: none"> • Personal injury. • Death. • Breach of an implied term- right to sell. • Breach of an implied term – description. • Breach of an implied term – satisfactory quality. • Breach of an implied term – Fitness for purpose. • Breach of the terms of a guarantee <p>1 mark for each correct answer (maximum 3 marks).</p>	[3]	<p>NB</p> <p>No credit for examples.</p> <p>Clear identification of types of exemption necessary.</p>

Question	Expected Answers	Marks	Additional Guidance
(d)	<p>*Both the courts and Parliament have introduced controls on exemption clauses to protect consumers.</p> <p>Discuss <u>three</u> reasons why consumers need to be protected from exemption clauses in contracts which they make.</p> <p>ASSESSMENT OBJECTIVE 3</p> <p>Candidates will discuss any of the following:</p> <ul style="list-style-type: none"> • because consumers could otherwise be the victims of unscrupulous business practice • because consumers may otherwise be forced to accept shoddy and defective goods • because otherwise consumers may have to accept poor service • also consumers would have no guarantee that the business owned the goods and had a right to sell them • because consumers could be injured or killed and be unable to claim • consumers would be unable to enforce their rights creating unfairness • because businesses would be able to avoid any liability for their own negligence • businesses would be able to avoid liability for breaching their contracts with consumers <p>Candidates will score as follows: 0 marks for no response or no response worthy of credit. 1-3 marks: basic points made with basic communication. The response lacks organisation, structure and accuracy of spelling punctuation and grammar.</p>		<p>Relevant examples may be credited as elaboration.</p>

Question	Expected Answers	Marks	Additional Guidance
	<p>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>7-9 marks: points explained with good reasoning and with effective communication through discussion. The response is well organised, structured, with few errors in spelling, punctuation and grammar.</p>	[9]	
	Total	[18]	

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