

## **Mark Scheme for June 2013**

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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**

<b>Annotation</b>	<b>Meaning</b>
	Correct point or answer given.
	Response is incorrect, no credit can be given.
	Benefit of doubt – credit given
	Benefit of doubt – credit <b>not</b> given
	'Repeat' Response repeats the same marking point.
	Not relevant or the response given is 'Unclear' to the marker. / to indicate all or part blank answer pages have been seen by the marker.
	Omission mark
	Level 1
	Level 2
	Level 3
	Expansion of a point
	Development of point
	Vague – credit cannot be given
	Not answered the question

<b>Question</b>		<b>Answer</b>	<b>Marks</b>	<b>Guidance</b>
1	(a)	<p><b>Candidates will identify up to <u>three</u> of the following:</b></p> <ul style="list-style-type: none"> <li>• Agreement</li> <li>• Consideration</li> <li>• Legal intent.</li> </ul>	3	<p><b>ASSESSMENT OBJECTIVE 1</b></p> <p>1 mark for each correct element identified</p> <p>Agreement could also be offer <b>and</b> acceptance. Show flexibility for other equally acceptable terms.</p> <p><b>(maximum 3 marks)</b></p>
	(b)	<p><b>Candidates will answer <u>true</u> as follows:</b></p> <p>(ii) (iv) (vi)</p>	3	<p><b>ASSESSMENT OBJECTIVE 2</b></p> <p>1 mark for each correct statement identified Credit "T" or a tick</p> <p>Accept first three answers if more have been chosen.</p> <p><b>(maximum 3 marks)</b></p>
2	(a)	<p><b>Candidates will identify as follows:</b></p> <p>(i) Wholesaler (ii) Retailer (iii) Repairer</p>	3	<p><b>ASSESSMENT OBJECTIVE 1</b></p> <p>Only credit definitive list</p> <p>1 mark for each correct type identified Do not credit seller in (ii)</p> <p><b>(maximum 3 marks)</b></p>

Question		Answer	Marks	Guidance	
				Content	Levels of response
(b)	Candidates will explain the following:		9	<b>ASSESSMENT OBJECTIVE 2</b> <b>Dmitri</b> <ul style="list-style-type: none"> <li>Dmitri has a duty of care to Tasos and the customers in his restaurant</li> <li>Dmitri has breached his duty since the mince he sold is out of date.</li> <li>It is foreseeable that it could cause damage therefore he will be liable for compensation.</li> </ul> <b>Rachel</b> <ul style="list-style-type: none"> <li>Rachel has a duty of care since she owns the business and has to assemble the bikes</li> <li>It may be argued that she has breached her duty by not following instructions when she assembles every bike</li> <li>However, Hector's injury is caused by him losing his balance and unless he can show this was caused by the incorrect assembly of the bike Rachel will not be liable and there is no remedy.</li> </ul> <b>Ernest</b> <ul style="list-style-type: none"> <li>Ernest has a duty of care as he is a computer technician</li> <li>He breaches his duty by not making sure that the computer electrics are safe</li> <li>This is the cause of the harm and so Ernest is liable therefore this means that Kuldip will be entitled to compensation.</li> </ul>	For each of the three scenarios above give credit as follows:  <b>Level 3 (3 marks)</b> for a number of points or good reasoning  <b>Level 2 (2 marks)</b> for identifying 2 basic points or adequate reasoning  <b>Level 1 (1 mark)</b> for identifying 1 basic point or limited reasoning  <b>(0 marks) – no response or no response worthy of credit</b>  If appropriate remedy is not included candidate cannot reach Level three.  (maximum 9 marks)

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(c)		<p><b>Candidates will discuss any <u>two</u> of the following:</b></p> <ul style="list-style-type: none"> <li>• Not all products, defects or damage are covered by the Act which can mean that consumers are not always protected</li> <li>• Consumers only have a limited time frame in which to bring an action which makes it hard for them to succeed</li> <li>• There are so many defences that it can be very difficult for a claimant to succeed</li> <li>• Although the Act is supposed to enable a claim to be made without needing to prove fault in reality what the consumer has to prove is much the same as in negligence and so it is still hard to make a successful claim</li> <li>• Goods with a value of less than £275 are not covered</li> <li>• The Act has no applicability to business property</li> <li>• There can be no claim for damage of the defective product itself as it is considered to be pure economic loss</li> <li>• Any other relevant limitation.</li> </ul>	6	<p><b>ASSESSMENT OBJECTIVE 3</b></p> <p>Credit should be given for both breadth and depth</p> <p>Using examples attracts some credit</p>	<p><b>Candidates will score as follows for each of the two limitations:</b></p> <p><b>Level 3 (3 marks) – develops a discussion of a relevant issue</b></p> <p><b>Level 2 (2 marks) – identifies a relevant issue with some elaboration</b></p> <p><b>Level 1 (1 mark) – identifies a relevant issue or makes any valid point</b></p> <p><b>(0 marks) – no response or nothing worthy of credit</b></p> <p><b>(maximum 6 marks)</b></p>

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3	(a)	<p><b>Candidates will identify up to <u>three</u> of the following:</b></p> <ul style="list-style-type: none"> <li>• The buyer is not buying in the course of a business</li> <li>• The seller is selling in the course of a business</li> <li>• The goods are of a type and quality associated with a consumer purchase.</li> </ul>	3	<p><b>ASSESSMENT OBJECTIVE 1</b></p> <p>1 mark each for each correct answer.</p> <p><b>(maximum 3 marks)</b></p>

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3	(c)	<p><b>Candidates will identify up to <u>three</u> of the following:</b></p> <ul style="list-style-type: none"> <li>• Service to be carried out with reasonable care <b>and</b> skill</li> <li>• Service to be carried out within a reasonable time</li> <li>• Service to be carried out for a reasonable price (if there is no advance agreement).</li> </ul>	3	<p><b>ASSESSMENT OBJECTIVE 1</b></p> <p>Must include reasonable care <b>AND</b> skill.</p> <p>Must include reasonable in all answers.</p> <p>1 mark for each correct answer.</p> <p><b>(maximum 3 marks)</b></p>

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4	(a)	<p><b>Candidates will insert from the list as follows:</b></p> <ul style="list-style-type: none"> <li>• term</li> <li>• parliament</li> <li>• narrower.</li> </ul>	3	<p><b>ASSESSMENT OBJECTIVE 1</b></p> <p>Accept condition as an alternative to term.</p> <p>1 mark for each word identified. <b>(maximum 3 marks)</b></p>
	(b)	<p><b>Candidates will explain up to <u>three</u> of the following:</b></p> <ul style="list-style-type: none"> <li>• Even though Sandra signed the contract Max knew of the defect and did not bring it to her attention.</li> <li>• The owner of the lake has not brought Vic's attention to the exclusion clause and so it cannot be relied on.</li> <li>• The price variation clause cannot be valid as the reason given for a need to change price does not occur here.</li> </ul>	3	<p><b>ASSESSMENT OBJECTIVE 2</b></p> <p>Credit to be given for the assumption that Max is acting in the course of a business and therefore the implied terms as to quality and/or fitness for purpose cannot be excluded.</p> <p>1 mark for each way correctly identified. <b>(maximum 3 marks)</b></p>
	(c)	<p><b>Candidates will identify up to <u>three</u> of the following:</b></p> <ul style="list-style-type: none"> <li>• No exclusion of liability for death/or personal injury</li> <li>• No exclusion of liability by reference to terms of a guarantee in respect of defects caused by negligence in manufacture or distribution</li> <li>• No exclusion of liability for breaches of the Sale of Goods Act 1979 or the Supply of Goods and Services Act 1982.</li> </ul>	3	<p><b>ASSESSMENT OBJECTIVE 1</b></p> <p>1 mark for death/or personal injury – do not credit both separately.</p> <p>Credit reference to Sale of Goods Act 1979 / Supply of Goods and Services Act 1982. Do not credit both separately.</p> <p>1 mark for each reason identified <b>(maximum 3 marks)</b></p>

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	(d)*	<p><b>Candidates will discuss any <u>three</u> of the following:</b></p> <ul style="list-style-type: none"> <li>• UCTA does not cover all exclusion clauses which can leave consumers without a remedy</li> <li>• UCTA is restricted in its scope which can make it seem unreasonable for consumers</li> <li>• UCTA ignores some unfair terms which are very common in many consumer contracts and so it can create inequalities in bargaining strength</li> <li>• The Regulations do not apply to terms which have been negotiated individually and this can put consumers at a disadvantage as they may be weaker and lack the confidence to negotiate</li> <li>• The Regulations do not allow consumer groups any powers to act which can deprive consumers of an important source of help</li> <li>• Any other relevant comment.</li> </ul>	9	<p><b>ASSESSMENT OBJECTIVE 3</b></p> <p>Credit should be given for both breadth and depth</p> <p>Using examples attracts some credit</p>	<p><b>Candidates will score as follows</b></p> <p><b>Level 3 (7–9 marks)</b> Develops a discussion of a relevant issue. The response is well organised, structured, with few errors in grammar, punctuation and spelling</p> <p><b>Must discuss UCTA and Regulations to move to Level 3</b></p> <p><b>Level 2 (4–6 marks)</b> Identifies a relevant issue with some elaboration The response is adequately organised, structured and with some errors of spelling, punctuation and grammar</p> <p><b>Level 1 (1–3 mark)</b> identifies a relevant issue or makes any valid point. The response lacks organisation, structure and accuracy of spelling, punctuation and grammar</p> <p><b>Discussion of only one limitation can lead to a maximum mark at top of Level 1</b></p> <p><b>(0 marks) – no response or nothing worthy of credit</b></p> <p><b>(maximum 9 marks)</b></p>

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