

## **GCSE**

### **Law**

Unit **B144**: Consumer Rights and Responsibilities

General Certificate of Secondary Education

## **Mark Scheme for June 2016**

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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

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		Expected Answer	Mark	Rationale/Additional Guidance
1	(a) (i)	<p><b>Candidates will identify the following in the definition:</b></p> <p>Breach Foreseeable damage resulting from breach</p>	[2]	<p><b>ASSESSMENT OBJECTIVE 1</b></p> <p>1 mark for each correct element.</p> <p>Elements do not have to provided in any specific order</p> <p>Credit “damage caused due to the breach” or similar</p> <p>Do not accept “Reasonably foreseeable”</p> <p><b>[maximum 2 marks]</b></p>
	(ii)	<p><b>Candidates will provide a suitable descriptive example</b></p> <p>e.g. (those tv adverts)</p> <p>Examples</p> <ul style="list-style-type: none"> <li>• Driver not paying attention and passenger/pedestrian injured</li> <li>• Load falling onto someone passing by</li> <li>• Scissors left inside a person after an operation</li> <li>• Slipping on a wet floor – no sign to say floor wet</li> </ul> <p>.....or similar</p>	[1]	<p><b>ASSESSMENT OBJECTIVE 1</b></p> <p>1 mark each for a correct example.</p> <p><b>[maximum 1 mark]</b></p>

Question	Expected Answer	Mark	Rationale/Additional Guidance
(b)	Candidates will TICK as follows :  A D E	[3]	<b>ASSESSMENT OBJECTIVE 2</b>  1 mark for each correct tick  If more than 3 ticks given – the first 3 will be marked. If all sections ticked – no marks allocated  <b>[maximum 3 marks]</b>

Question		Expected Answer	Mark	Rationale/Additional Guidance
2	(a)	<p><b>Candidates will identify implied terms as follows:</b></p> <p>(i) The service must be carried out with reasonable skill and care</p> <p>(ii) That the goods must be of a reasonable price</p> <p>(iii) The service should be carried out in a reasonable time</p>	[3]	<p><b>ASSESSMENT OBJECTIVE 1</b></p> <p>1 mark for each correct term identified</p> <p><b>maximum 3 marks</b></p> <p>(i) must have “reasonable skill and care”</p> <p>(ii) credit alternative phrasing such “reasonable cost”</p> <p>(iii) credit alternative phrasing such “breach of time taken”</p> <p>Accept alternative use of correct section numbers from Supply of Goods and Services Act</p> <p>(i) s.13</p> <p>(ii) s.15</p> <p>(iii) s.14</p>

Question		Expected Answer	Mark	Rationale/Additional Guidance
2	(b)	<p><b>Candidates will correctly identify if the implied term is breached or not together with the most appropriate remedy:</b></p> <p>Gordon</p> <ul style="list-style-type: none"> <li>• The implied term has been breached</li> <li>• The car was described as being in perfect order - it was clearly not because the brakes failed</li> <li>• Therefore there is a breach of contract and Gordon can have his money back unless he caused the problems</li> </ul> <p>Jennie</p> <ul style="list-style-type: none"> <li>• The implied term has been breached</li> <li>• The firm has not charged a reasonable price/no other price was agreed</li> <li>• Therefore there is a breach of contract and Jennie is entitled to pay a reasonable sum £300</li> </ul> <p>Andre</p> <ul style="list-style-type: none"> <li>• The implied term has not been breached</li> <li>• The garage has not been completed within the given time but it is unlikely that 4 weeks is unreasonable</li> <li>• Andre will have to pay for the service – there is no remedy</li> </ul>	[9]	<p><b>ASSESSMENT OBJECTIVE 3</b></p> <p>Annotate using levels; level 1, level 2, level 3</p> <p><b>For each situation give credit as follows:</b></p> <p>0 marks - No response or nothing worthy of credit  1 mark - Identifies if implied term breached  2 marks - Explains why breach has occurred  3 marks - Identifies an appropriate remedy if any</p> <p>Gordon - Credit alternative remedy of getting car fixed</p> <p>Jennie - Candidate must identify that the price of £500 is unreasonable/excessive or similar phrases</p> <p><b>[maximum 9 marks]</b></p>

Question		Expected Answer	Mark	Rationale/Additional Guidance
2	(c)	<p><b>Candidates will discuss the following:</b></p> <p><b>Goods must correspond with description (s.13)</b></p> <ul style="list-style-type: none"> <li>• The goods must be as described by the seller</li> <li>• If they are not it is a breach of contract and the buyer is entitled to a remedy which would include getting their money back/make a claim.</li> </ul> <p><b>Goods must be of a satisfactory quality (s.14)</b></p> <ul style="list-style-type: none"> <li>• Goods are of satisfactory quality if they meet the standard that a reasonable person would regard as satisfactory, taking into account any description of the goods, the price (if relevant and all other circumstances)</li> <li>• If they are not it is a breach of contract and the buyer is entitled to a remedy which would include getting their money back/make a claim</li> </ul> <p><b>Goods sold by sample (s.15)</b></p> <ul style="list-style-type: none"> <li>• In the case of a contract for sale by sample there is an implied that the bulk will correspond with the sample in quality;</li> <li>• goods will be free from any defect which would not be apparent on reasonable examination of the sample.</li> <li>• If they are not it is a breach of contract and the buyer is entitled to a remedy which would include getting their money back/make a claim</li> </ul>		<p><b>ASSESSMENT OBJECTIVE 1/2</b></p> <p><b>For each implied term give credit as follows:</b></p> <p>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 - Identifies and explains a relevant issue</p> <p>Section numbers are not necessary for Supply of Goods and Services Act but no credit to be given if used if they contradict explanation.</p> <p>Suitable example illustrating implied term(s) necessary to achieve full marks</p> <p><b>[maximum 6 marks]</b></p>

Question	Expected Answer	Mark	Rationale/Additional Guidance
	<p><b>Goods right to sell (s.12)</b></p> <ul style="list-style-type: none"><li>• Business must have the right to sell the products concerned (s12)</li><li>• Stolen goods would not be passed on etc</li><li>• If they are not it is a breach of contract and the buyer is entitled to a remedy which would include getting their money back/make a claim</li></ul>	<p><b>[6]</b></p>	

Question		Expected Answer	Mark	Rationale/Additional Guidance
3	(a)	<p>Candidates will identify up to three of the following type of damage which the Act applies to:</p> <ul style="list-style-type: none"> <li>• Death</li> <li>• Personal Injury</li> <li>• Loss or damage to property (in excess of £275) caused by unsafe products</li> </ul>	[3]	<p><b>ASSESSMENT OBJECTIVE 1</b></p> <p>1 mark for each correct answer</p> <p><b>[maximum 3 marks]</b></p> <p>Accept appropriately written examples as alternative to types of damage</p> <p>Do not credit “Damage to Property”</p>
3	(b)	<p>Candidates will identify up to three of the following defences:</p> <ul style="list-style-type: none"> <li>• Product complies with statutory or EU obligations</li> <li>• Defect did not exist when product supplied by defendant</li> <li>• The product was not supplied in the course of business</li> <li>• State of technical/scientific knowledge such that defendant could not have known about defect</li> </ul>	[3]	<p><b>ASSESSMENT OBJECTIVE 1</b></p> <p>1 mark for each correct defence</p> <p><b>[maximum 3 marks]</b></p> <p>Accept appropriately written examples as alternative to defence</p>
3	(c)	<p><b>Candidates will TICK as follows :</b></p> <p>A - Producer            B - Own Brander            C - Producer            D - Importer            E - Producer            F - Producer</p>	[6]	<p><b>ASSESSMENT OBJECTIVE 2</b></p> <p>1 mark each for each correct tick</p> <p>If more than 1 tick given for each defendant – no marks allocated</p> <p><b>[maximum 6 marks]</b></p>

Question	Expected Answer	Mark	Rationale/Additional Guidance
3 (d)	<p><b>Candidates will answer as follows:</b></p> <p><b>(i) Wayne</b></p> <ul style="list-style-type: none"> <li>• will not be able to make a claim</li> <li>• he is unable to make a claim under the CPA 1987 because this type of problem is not covered under the CPA</li> <li>• action under the Sales of Goods 1979 would be necessary – but would fail as the instructions clearly state that only up to 5 sheets of paper can be shredded at any one time</li> </ul> <p><b>(ii) Geena</b></p> <ul style="list-style-type: none"> <li>• will not be able to make a claim</li> <li>• she is unable to make a claim under the CPA 1987 because this type of problem is not covered under the CPA</li> <li>• action under the Sales of Goods 1979 would be necessary – but would likely succeed as she followed instructions</li> </ul> <p><b>(iii) Irma</b></p> <ul style="list-style-type: none"> <li>• Irma will be able to make a claim</li> <li>• She followed the instructions and the mixer overheated – the product is faulty</li> <li>• The damage to the work surface would have to exceed £250</li> </ul>	<b>[6]</b>	<p><b>ASSESSMENT OBJECTIVE 3</b></p> <p>Annotate using levels; level 1, level 2, level 3</p> <p><b>For each situation give credit as follows:</b></p> <p>0 marks - No response or nothing worthy of credit  1 mark - Identifies if claim can/cannot be made  2 marks – appropriate explanation reasoning has to be correct</p> <p><b>[maximum 6 marks]</b></p>

Question		Expected Answer	Mark	Rationale/Additional Guidance
4	(a)	<p>Candidates will identify the following in the definition:</p> <p>limiting civil enforceable</p>	[3]	<p><b>ASSESSMENT OBJECTIVE 1</b></p> <p>1 mark each for each correct element.</p> <p><b>[maximum 3 marks]</b></p>
4	(b)	<p>Candidates will explain as follows:</p> <ul style="list-style-type: none"> <li>• The clause is invalid</li> <li>• The Act does not allow exclusion clauses exempting liability for death or injury caused by negligence</li> <li>• Therefore it is unenforceable against Martin who will be able to claim compensation for his injuries</li> </ul>	[3]	<p><b>ASSESSMENT OBJECTIVE 2</b></p> <p><b>For the issue explained give credit as follows:</b></p> <p>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> <p><b>[maximum 3 marks]</b></p>
4	(c)	<p>Candidates will identify three differences:</p> <p>Regulations cover:-</p> <ul style="list-style-type: none"> <li>• Contractual terms in general and not only exclusion clauses</li> <li>• Only covers consumer contracts not inter-business contracts – purely concern consumer protection</li> <li>• Definition of seller is wider</li> <li>• Definition of consumer is wider</li> <li>• Only apply if consumer has not individually negotiated the terms with the seller</li> </ul>	[3]	<p><b>ASSESSMENT OBJECTIVE 2</b></p> <p>1 mark each for each correct difference</p> <p><b>[maximum 3 marks]</b></p>

Question		Expected Answer	Mark	Rationale/Additional Guidance
4	(d)	<p><b>Candidates will identify and discuss three ways in which judges have protected consumers as follows:</b></p> <ul style="list-style-type: none"> <li>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.</li> <li>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.</li> <li>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.</li> <li>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.</li> <li>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.</li> </ul>		<p><b>ASSESSMENT OBJECTIVE 3</b></p> <p><b>Candidates will score as follows</b></p> <p><b>Level 3 (7–9 marks)</b>  <b>Develops a discussion of a relevant issue. The response is well organised, structured, with few errors in grammar, punctuation and spelling.</b></p> <p><b>Level 2 (4–6 marks)</b>  <b>Identifies a relevant issue with some elaboration The response is adequately organised, structured and with some errors of spelling, punctuation and grammar</b></p> <p><b>Level 1 (1–3 mark)</b>  <b>identifies a relevant issue or makes any valid point. The response lacks organisation, structure and accuracy of spelling, punctuation and grammar</b></p> <p><b>7-9 marks can only be achieved if candidates have explained at least one point at L3.</b></p> <p><b>4-6 marks can only be achieved if candidates have explained at least one point at L2</b></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>

Question	Expected Answer	Mark	Rationale/Additional Guidance
	<ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> <li>• 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.</li> </ul>	<b>[9]</b>	<b>Credit should be given for both breadth and depth</b>  <b>Using examples/relevant cases attracts some credit</b>

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