Examiners’ report 2014

LA1040 Elements of the law of contract – Zone A

Introduction

General examination advice is to ensure that you read the examination questions carefully and decide the topic which is being examined and which questions you want to tackle. The questions are set out to allow you to demonstrate your knowledge and understanding in relation to specific issues. Although there may be some overlap there are no two questions on the same topic. There are no trick questions, so ask yourself ‘why have the Examiners told me this, what legal issues are raised on these facts?’

There were some very good answers in this examination, which had a good grasp of the relevant case law and legislation. In problem questions good answers directly applied this knowledge to the facts presented. In essays they built critically on this knowledge and answered the actual question posed.

There are certain errors which occur in most examination sittings. One is a failure to identify the correct area of law; this may arise from a failure to actually read the rubric and identify who is being advised (see specific comments below). Also, some candidates answer two questions on the same topic. It is highly unlikely that this is being asked for, as explained above, so read the questions carefully to see the clues that there are in the question to help focus the answer. If the subject guide has been followed and the activities undertaken this should help you identify the facts which raise certain legal issues, and then the appropriate response.

Another problem is failure to use relevant authority to support arguments. There remain some answers which have no authority at all; these cannot gain credit for the required knowledge which needs to be evidenced in the answers. Some candidates who use no cases but say ‘there is a decided case’ will also gain little credit, in a common law system there will be cases on most issues covered so this is not showing knowledge of cases.

Additionally, there are candidates who write all they know on a particular area, whether relevant to the question or not, then ‘apply the law’ in a short paragraph. This is not the correct style. This style leads to repetition, which is time consuming and will mean there is time pressure to fully answer the question, and an inability to show understanding of the relevant law by applying it to the given facts. There were a large number of answers which had a long introduction setting out the issues to be discussed, which was little more than a repetition of the key facts, followed by a ‘statement of law’ which was either an essay or list of all the issues which are related to the subject, whether relevant or not, then ‘application to facts’ where the candidate concluded if there was an issue or not. This style does not allow you to show which part of the law you set out is relevant to your conclusion. You must apply the law to the facts supported by the relevant law. Remember you are asked to advise a person on the given facts. So being selective of the relevant law to their facts is essential.
A logical answer will also show that you have planned your answer based on the relevant facts and thought logically about the demands of the facts. In problem questions advise each party separately to help in keeping their answer logical (see specific advice). In essays remember to formulate an answer that actually addresses the question posed. There is still a tendency to write the answer to the question candidates wish they had been asked or a prepared answer to a question which has appeared in the past. This will gain little credit, if any, as the essay requires a critical approach to the issue based on the question posed.

There were also some candidates who did not plan their time, answering three questions well with a weak, or sometimes non-existent, fourth answer. This means that there are immediately 25 per cent of potential marks lost. In an age of electronic writing it may help you to practice writing timed answers in long hand. This will pay dividends in the final examinations.

Specific comments on questions

Question 1

On 1st May Aga decides to sell her collection of pots. She places an advert in the local paper, 'Beautiful Arden pot for Sale. £500 or nearest offer.' She includes her telephone number, email address and postal address on the advert. On 2nd May Beatrice emails Aga saying, 'I will buy the pot for £450.' Aga replies saying, 'I will take £475 but please let me know by 5pm today as another customer is calling to see the pot tomorrow.' Beatrice immediately emails back asking if Aga will accept payment by cheque. By 4.30pm she has not heard from Aga so sends a further email to say she will buy the pot for £475. Aga's internet connection is lost that afternoon and Aga does not get this email until it is reconnected on 5th May. On 3rd May Chad calls Aga and says he will buy the pot for £400 but Aga says she would not take less than £475. Chad says he will think about this. Later that day Chad writes to Aga saying he will pay £475 but the letter is misaddressed and never arrives. On 4th May Aga sells the pot to Didier for £500. Didier, a friend of Beatrice, meets her on 5th May and tells her of his luck in getting the pot. Beatrice is upset as the pot would complete her Arden Collection.

Advise Aga.

General remarks

This question was related to agreement: it would be useful for candidates to take each party and deal with their issues chronologically.

First, discuss the nature of the advert, offer or invitation to treat (ITT) with relevant case law to explain the principles. It is likely that this is an ITT. Some candidates also concluded that this was not an offer as it was a bi-lateral advertisement; the advertisement was not a bi-lateral situation as it was made to the world in general.

The next logical stage was to consider the nature of Beatrice’s (B) communication, as the advert is likely to be an ITT it is B who makes an offer. Some candidates concluded this was a counter offer, which is illogical as a counter offer requires an original offer to counter. It is Aga (A) who makes a counter offer, which should be explained with reference to relevant case law. This offer will end at 5pm that day, when it will lapse. Candidates may explain that there is no obligation to keep the offer open until this time, with reference to relevant case law.
B’s email following A’s offer could be a request for information, which appears most likely, so the offer is still open. If there is a counter offer, then this ends A’s offer which cannot be accepted by later email. This should be explained with reference to relevant case law. If the email was a request for information then B has later sent acceptance, but not communicated this until 5th May. There should have been discussion with the relevant law whether this communication was effective. If the communication was not effective, then when B meets Didier (D) who says he has purchased the pot, does this mean the offer is revoked? Is Didier reliable? Good answers noted that this was not necessary as the offer would have lapsed earlier so there was no need to revoke.

Chad’s (C’s) call would be an offer, which follows logically from the earlier conclusion that the advert was an ITT, then there is a counter offer by A. Then C sends a letter which seems to be an acceptance. This must be communicated, but it is misaddressed so is not communicated. There should be a discussion of the postal rule with relevant case law. The offer would remain open until it was revoked or lapsed on a reasonable passage of time.

**Law cases, reports and other references the Examiners would expect you to use**

This is an indication of cases which could be included and not an indication of all cases which are relevant.

- *Smith v Hughes* (1871) LR 6 QB 597; *Partridge v Crittenden* [1968] 1 WLR 1204;
- *Hyde v Wrench* (1840) 3 Beav 334; *Entores v Miles Far East Corp* [1955] 2 QB 327;
- *Adams v Lindsell* (1818) 1 B & Ald 681; *Korbetis v Transgrain Shipping* [2005] EWHC 1345 (QB); *Dickinson v Dodds* (1876) 2 Ch D 463; *Routeledge v Grant* (1828) 4 Bing 653.

**Common errors**

Considering the advert as an offer, which is unlikely on authority. Giving a long detailed discussion of the facts of cases that were irrelevant to the facts in the question. Failing to plan the answer to ensure that all the issues were considered fully. Very few candidates considered the offer to B as lapsing at 5pm.

**A good answer to this question would…**

Deal with the parties logically and consistently, using case law consistently to support their argument. The best answers dealt with the majority of the issues identified above and had a good range of cases to support their points.

**Poor answers to this question…**

Failed to discuss the issues logically and the relevant communication issues. For example, discussing the postal rules in relation to B and A when there was no issue of post in their communication. Failed to use case law or were overly descriptive of the cases in this area without applying the principles (*ratio* and *obiter*) to the relevant facts.

**Student extract**

This area of law is under postal rule. Offer is complete when it accepted. Aga made an offer which was accepted by beatrice. Beatrice wanted to create a counter. Counter offer cancels the original price. Aga made a right decision of selling the post to didier. Didier offered Aga the original price of the pot that was £500. If Aga had accepted beatrice offer she wouldn’t had get the £500.

**Comment on extract**

This is the opening paragraph of an answer. Although it is good to begin by setting out the area of law there is a basic error as to the area covered, which is
agreement, the postal rule being merely an element in this area of law. The third sentence is probably correct on the facts, but because there is no application of the facts here it is unclear if the candidate believes that the advert is an offer, which is unlikely, or that the response to Beatrice’s email of 2nd May offering £450 is an offer. This may illustrate how important it is to apply the law to the facts.

The sentence ‘Beatrice wanted to create a counter offer’ suggests that the candidate thinks the advertisement was an offer, as you cannot counter offer an invitation to treat. Some candidates concluded that the advert was an invitation to treat then argued, illogically, that Beatrice’s email of 2nd May offering £450 was a counter offer. There was no offer to counter. This shows a lack of planning and thought about the law in this area. The last part of the extract is a general comment that Aga has managed to get more money for the pot, but this is not relevant to the legal situation. There is also no authority in this answer, despite mentioning key legal issues such as offer, counter offer and postal rule.

Question 2

‘The Contract (Rights of Third Parties) Act 1999 is a success in theory but a failure in practice.’

Discuss.

General remarks

This question required an understanding of the Act and the relevant case law which has used the Act. You could compare this to the previous rules and perhaps consider how the decisions would have changed had the Act been in force.

Law cases, reports and other references the Examiners would expect you to use

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Common errors

Many candidates just listed the Act and gave a general summary of its provisions or just listed the common law and sometimes statutory exceptions that were used before the Act without any attempt to address the question posed. This often gave the indication that an answer to a ‘privity essay’ had been pre-learned and was going to be given no matter what the question.

A good answer to this question would...

Good answers referred to cases which had been decided in relation to the Act and focused on how successful or unsuccessful they were in matching the theory which underpins the Act and its practice. Some candidates also usefully compared the previous common law decisions and how they would be different under the Act.

Poor answers to this question...

Presented a pre-prepared answer to an essay in this area and failed to apply the knowledge in that answer to actually answer the question posed. Some answers merely described the Act and previous or current law and failed to be critical of the authority as required in essays.
Question 3

Bob, a specialist toy seller, wishes to maximise his toy sales during the busy Christmas period and therefore decides to improve the website for his online toy store. He reads an advertisement in the local paper in which Scoop offers ‘professional web design services’. Bob calls Scoop who tells him that, if he opts for Scoop’s premium web design service, the number of potential customers clicking on his website will increase by 400,000. Bob is impressed by this, as well as Scoop’s reasonable hourly rates. He therefore decides to contract with Scoop. However, Scoop is only a trainee web designer and makes little improvement to the website. The visitors to Bob’s online store do not increase and instead customers prefer to shop with Bob’s competitors. Bob is furious because he believes he would have made £30,000 in pre-Christmas profits had he got 400,000 more customers. Furthermore, he is now unable to pay the rent on his High Street shop and he is evicted from the premises.

Advise Bob.

General remarks
This question was related to the issues of pre-contractual statements. One issue is to establish if the statements are contractual terms. For agreement contractual terms need to be certain. However, candidates are not required to consider agreement issues here in any detail.

Candidates should identify relevant statements such as ‘professional web design’ and ‘increase in customers’. These are quite vague terms unlikely to be terms of a contract. This should guide candidates to consider misrepresentation.

Some candidates considered this to be an issue of breach of contract. If this approach was taken then the losses from the breach would have been too remote. This may indicate that this is an unlikely claim and is a clue that the question is actually focused on the tort of misrepresentation.

Candidates should first identify if there is an actionable misrepresentation. A useful way to do this is to define a misrepresentation and then work through that definition applying it to the statements. On the facts there was an indication the statements did not induce the contract, which should be addressed. After fully discussing this with reference to relevant case authority the next issue is to establish which type of misrepresentation is the best option for a claim. This would then lead to a discussion of the relevant remedies which will follow from each time of misrepresentation.

Law cases, reports and other references the Examiners would expect you to use.
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Common errors
Candidates failed to identify which statements could be actionable. Also some failed to establish if all the elements of an actionable misrepresentation were present. A failure to use the relevant case law to support the arguments and to explain which
remedies would follow. Some candidates confused the claim under s.2(1) Misrepresentation Act 1967 and negligent misstatement under Hedley Byrne v Heller.

A good answer to this question would...
Take the answer logically, defining a misrepresentation and then using this definition to explain, with relevant case law, if the statements made were actionable. A key feature was the inducement as it appeared that the rates were important to entering the contract rather than any statements made. Good answers identified the best route by which to make a claim and the relevant shift in the burden of proof. The remedies available under each claim were identified and applied to the facts.

Poor answers to this question...
Thought the whole question was about breach of contract. Alternatively, did not explain which statements were possibly actionable, failed to explain what elements are essential for an actionable misrepresentation and then to apply it to the facts with relevant case law. Weaker candidates failed to explain or understand the different types of misrepresentation, especially the difference between an action under s.2(1) Misrepresentation Act 1967 and a common law claim in negligence under Hedley Byrne v Heller. Poor answers also failed to explain the shift in the burden of proof between deceit and a claim under the Act.

Question 4

Hassan is planning a high profile charity event; the highlight will be the performance of a ballet, which requires a special stage to be installed. Hassan contracts with ‘Better Staging’ to install the required stage for a price of £2,000. They promise to have this in place a week before the event so that the dancers can practise before the performance. Better Staging call Hassan two weeks before the event to say they cannot install the staging, as they have lost the required spanners which cost £300 to replace. As Hassan is desperate to make the event a success he promises to pay for the replacement spanners. The staging is then erected as promised, Better Staging also provide an extra area for the dancers to prepare off stage and practise their dance steps.

Hassan is delighted with this area and tells Better Staging he will pay them an extra £100 for this as it has enhanced the dancers’ performance. The event is a great success and Hassan receives very positive press coverage which leads to him being hired for further event management ventures.

Hassan had allowed Crab Apple to rent a pitch at the event for £1,000. Crab Apple made little profit and, at the end of the day, could not pay the £1,000. Hassan said to Crab Apple “Don’t worry, it’s been a fantastic day for me, £200 will do”. Hassan now regrets saying this and has asked Crab Apple to pay the balance of the £1,000.

Hassan is now refusing to pay Better Staging for the spanners and the extra staging.

Advise Hasan.

General remarks
This is a question on consideration, which should be defined with relevant case law. In relation to the first elements the issue was the performance of an existing obligation. This is not good consideration, unless something extra was provided (referring to Stilk v Myrick/Hartley v Ponsonby). Here there was an extra area which may have been valid consideration for the money. The question was clearly looking
to a discussion of *Williams v Roffey* and many candidates did identify this but few put this in the context of the other cases mentioned above.

The extra area also led to issues of past consideration, which many candidates identified and dealt with well. Good answers noted this could not get both the £100 and the £300. The last element was in relation to part payment of a debt, where the common law principles of *Foakes v Beer/Pinnel’s Case* were relevant. Good answers then considered how promissory estoppel may alter the conclusion.

**Law cases, reports and other references the Examiners would expect you to use**

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*Currie v Misa* (1875) LR 10; *Stilk v Myrick* (1809) 2 Camp 317; *Hartley v Ponsonby* (1857) 7 E&B 872; *Williams v Roffey Bros* [1991] 1 QB 1; *Foakes v Beer* (1884) 9 App Cas 605; *Pinnel’s Case* (1602) 5 Co Rep 117a; *Re McArdle* [1951] Ch 669; *Pao On v Lau Yiu Long* [1980] AC 614; *CLP v High Trees House* [1947] KB 130.

**Common errors**

Failing to consider the extra work as being valid consideration for the £300. Not explaining clearly the requirements of *Williams v Roffey* and estoppel. Not seeing the extra staging area as being extra work undertaken which may have been consideration for the £300.

**A good answer to this question would...**

Begin with a definition of consideration then take each of the fact scenarios and explain the relevant law. Explain the general principles where relevant, with reference to cases and then look to the exceptions which may apply. Good application of the facts in relation to the requirements of *Williams v Roffey* and estoppel, with close reference to cases.

**Poor answers to this question...**

Merely listed the different elements of consideration, whether they were relevant or not. Or they did not put the difficult case of *Williams v Roffey* in the context of the earlier cases. Some candidates failed to explain estoppel or applied it incorrectly as a sword in the first two claims.

**Question 5**

The University of Bloomsbury booked the Treaty String Quartet to perform at their Graduation Ceremony on 20th August 2013. They promised to pay £10,000 for this performance. They paid £1,000 on 1st June 2013 and promised to pay a further £3,000 on 1st July 2013 (although this was not in fact paid) and the balance on the day of the ceremony. On 30th June 2013 the Treaty String Quartet bought their plane tickets (costing £2,000).

On 1st March 2013 Hamid rents a flat for six months, to cover the period of the revision, exams which end on 30th May and graduation in August, so he can focus on his studies then really be ready for graduation celebration. The lease requires the deposit to be paid on 1st March then monthly payments on the first of each month.

Advise the parties on their rights and liabilities (if any) in the following alternative situations.

a) On 2nd July a series of strikes means that the graduation is cancelled for security reasons.
b) On 2\textsuperscript{nd} July the graduation is cancelled because the University has decided it is too expensive and they tell the Treaty String Quartet not to arrive.

**General remarks**

The issue here is discharge of contract.

**Treaty String Quartet (TSQ)**

In (a) University of Bloomsbury (UB) will argue the contract is frustrated, which needs to be defined and it is useful to begin with the original position that contracts are meant to be performed (*Paradine v Jane*). If the contract is frustrated, which it appears it may be here as the strikes were beyond their control and not their fault, then the consequences in common law and under the Law Reform (Frustrated Contracts) Act should be explained. TSQ will claim a breach and damages, which a careful plan of the answer should see is relevant to the consideration in part (b).

In b) this is likely to be an anticipatory breach. If there is a breach, then explain the consequence of this and the likely remedies which could be claimed could be validly considered.

**Hamid (H)**

In (a) it is difficult to say a lease is frustrated, as he has had some benefit. If it is frustrated then explain the damages. In b) there is no real change. The role of H is to consider the possibility of frustration of a lease and is a small part of the answer. Note that this part of the answer is much briefer than the discussion with TSQ. Some candidates failed to consider this part of the answer.

**Law cases, reports and other references the Examiners would expect you to use**

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**Common errors**

Failing to consider Hamid and his possible claims. Failing to identify the elements of frustration and then how this applied to the facts. Failing to understand and apply the remedies which may apply. No consideration of the remedies if the contract was breached.

**A good answer to this question would…**

Define frustration and then explain if the facts presented a frustration of the contracts. Clearly explained the consequences of a frustration, with reference to common law and legislation. Also explained briefly the consequences of breach and recoverable losses.

**Poor answers to this question…**

Failed to identify this as a frustration question and only considered breach of contract. Merely listed the elements of frustration and failed to explain how the principles related to the facts. Failed to explain the consequences of frustration for all the parties.
Question 6

Julie provides exclusive make-up, many of the transactions being over the internet to international clients. Mildred has been in email contact with Julie showing interest in the Whole Bodycare Range. Mildred claims to be a famous body-double actress (Hellie Wainrite) who needs the makeup for her new blockbuster film part. Julie thinks this will be good marketing for her business. After research on the internet realises this could be very good for her business. Mildred arranges by telephone to visit Julie’s showroom saying she wants to buy every item in her Whole Bodycare Range at a total cost of £8,000. When Mildred arrives, she offers to pay by credit card. The name printed on the credit card is Hellie Wainrite. Mildred explains to Julie that she is near her credit limit and so pays a deposit of £3,000 by credit card and promises to pay the outstanding amount later that day. Keen to make the sale, Julie lets Mildred take the makeup with her in its large presentation box. Unknown to both, the presentation box actually contains the Male Beauty Kit.

Mildred then takes the unopened box to Noor, a local beauty shop, and sells it to her for £2,000 and disappears.

The credit card is later declined by the bank as it was reported stolen and Julie has seen the presentation box on display at Noor’s shop.

Advise Julie on any claims he may have against Noor.

General remarks
This question was in relation to mistake. There were two mistakes here, one as to the identity of the customer, which was a unilateral mistake, and then a common mistake as to the subject matter. Candidates should have noticed that the rubric asked about a claim against Noor, which means that there should have been only the briefest reference to the fraud by Mildred. This should have been in relation to Noor obtaining good title, if the contract was not void for mistake, in which case Noor could not obtain good title, and then Julie could recover the product. If it was voidable for fraud then Noor may have obtained good title and there could be no claim against her. The main focus should have been if the contract was entered into under an operative mistake. There should have been a discussion of distance and face to face contracts in relation to identity and then if the mistake as to the product was sufficiently fundamental to destroy the contract agreement.

Law cases, reports and other references the Examiners would expect you to use
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Common errors
Many candidates failed to consider the second error which was evident on the facts. Also some candidates answered this as a misrepresentation question, which may have stemmed from a failure to read the rubric.

A good answer to this question would...

Have identified the two mistakes which may have assisted any claim Julie would want to make. For the identity it was necessary to decide if the contract was made at a distance or face to face and the relevance of the cases in this area. The mistake as to the nature of the product was also considered and the effect of such a
mistake on the ‘contract’ with Mildred and how this would enable Julie to recover the product from Noor.

Poor answers to this question...
Failed to identify this as a mistake question despite the clear clues in the question and the rubric that only if the contract was void would there be a claim against Noor. Some candidates thought that as the claim was against Noor that it was a question on rights of third parties, despite there being an essay on this topic earlier in the examination paper.

Question 7
‘The traditional approach in English contract law is to award damages for non-pecuniary losses very reluctantly. Recent case law, however, reveals a more generous attitude towards the recovery of this type of loss. It is difficult to justify this latter approach.’
Discuss.

General remarks
The question was very specific and there could have been a valid brief discussion of the general principles of damages, with reference to Robinson v Harman. This should have been a brief discussion and the main body of the answer should have considered how the general reluctance to award damages for non-pecuniary losses in contract has been viewed by the courts. There should have been close reference to relevant case law and critical commentary on those cases.

Law cases, reports and other references the Examiners would expect you to use
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Common errors
Candidates failed to see this as a question specifically on non-pecuniary losses. This led to a discussion of the general principles of damages. While this may be valid briefly to put the essay in context the essay should have focused on non-pecuniary losses.

A good answer to this question would...
Explain the traditional approach to contract damages briefly and then explain why the courts were reluctant to award damages beyond the traditional measures and comment on the cases where the courts had done this.

Poor answers to this question...
Merely explained the different measures of damages traditionally awarded and did not address the question posed. Alternatively the cases of non-pecuniary awards were merely described and not commented on or analysed critically.

Student extract
In Addis v Gramphone the courts refuse to award the victim of non-pecuniary losses. However in recent case law the courts reveal a more generous attitude towards the recovery of this type of loss. In Heywood v Weller the court will only award damages for non-pecuniary losses when the purpose of the contract is solely on relaxation and peace of mind. In Farley v Skinner the courts took the same approach although the purpose of the contract is not solely on the relaxation and peace of mind.
Comment on extract
The candidate here is evidencing a good range of knowledge in the area examined. The candidate is showing that there has been a move in recent decisions. This shows that they are going to actually answer the question posed. They then linked the decision in Farley v Skinner with basic contractual principles that the non-pecuniary losses were in the contemplation of the parties so therefore within the traditional contract model. This demonstrated that the candidate had thought about the question, made the connection with wider contractual damages principles and answered the question posed. An essay requires there to be some critical analysis of the law.

Question 8

Terence wishes to hire a bicycle for the day from Rides Ltd, a bicycle hire company that supplies bicycles at various docking stations across London. He arrives at a docking station and carefully reads the instructions written on the docking station’s screen. He is asked to insert his credit card and on doing so the machine prints out a ticket. Terence is then asked to confirm the hire charge of £20. Terence confirms this hire charge and the machine returns the credit card. On one side of the ticket is a code which unlocks the bicycle from the docking station. On the other side of the ticket is a term that states: ‘Rides Ltd limit liability for any damage whatsoever and howsoever caused during the operation of their bikes to the daily hire charge of £20.’

Terence is enjoying his ride across London when suddenly the brakes on the bicycle fail and he falls into a canal. Terence injures his right arm and needs physiotherapy. He also ruins his £2,000 laptop that he was carrying at the time of the accident.

Advise Terence.

General remarks
This question considered breach of contract and the attempts to limit liability for any breaches. The starting position should have been to identify the breach of contract, with reference to implied terms under the Supply of Goods and Services Act, and the losses which flowed from those breaches. The next step in this type of answer is to consider if the attempt to limit liability of Rides Ltd has been incorporated into the contract. This requires close reference to case law, timing, nature of the document and notice. After this there should have been a discussion of the construction arguments, some students failed to do this despite the vague nature of the limitation clause. After discussing the common law principles students should then discuss the Unfair Contract Terms Act (UCTA) and Unfair Terms in Consumer Contracts Regulations (UTCCR).

Law cases, reports and other references the Examiners would expect you to use
This is an indication of cases and authority which could be included and not an indication of all cases which are relevant.

Common errors
Failing to identify the breach for which Rides are trying to limit liability. Failing to fully consider the common law mechanisms of dealing with exclusion or limitation clauses. Failing to consider the construction tests, when this term was very broad. Not explaining how the principles of unreasonableness under UCTA were applied. It is not a stand-alone requirement but needs to be established in tandem with other sections of UCTA. Failing to consider the Regulations.

A good answer to this question would...
Deal logically with the answer, identify the breach and then apply the common law principles of incorporation and construction to the facts. Then after fully discussing this with reference to relevant case law, apply UCTA and UTCCR.

Poor answers to this question...
Failed to use the relevant cases to support the arguments on incorporation, some failing to consider the common law rules at all. Some candidates failed to consider any relevant construction arguments despite the vague nature of the limitation clause. Some candidates also just applied the reasonableness test under UCTA without explaining how they reached s.11. The test of reasonableness is not a stand-alone section, it is related to attempts to exclude liability under ss.2, 3, etc.