Examiners’ reports 2015

LA1040 Elements of the law of contract – Zone B

Introduction

A key requirement in examinations is to read the question carefully and identify the relevant issue being examined. The questions are designed 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?’ Knowing the facts of the cases helps you to identify the areas of law, but remember you are not required to repeat the detailed facts of cases in your answer.

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 understand who is being advised (see specific comments below). Another is answering two questions on the same topic; it is highly unlikely that there will be two questions on the same topic, 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.

You must use relevant authority to support your arguments. If your answer contains no authority, you cannot gain credit for the required knowledge which needs to be evidenced in the answers. Using no specific cases but saying ‘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.

Avoid just writing all you know on a particular area, whether relevant to the question or not, then ‘applying the law’ in a short paragraph. This displays a lack of understanding of the relevant law. It can also lead to repetition, which will use up valuable time. You must apply the relevant law to the facts. Remember, you are asked to advise a person on the given facts. So using the relevant law is essential.

You should plan your answer based on the relevant facts and think logically about the demands of the facts. In problem questions, advise each party separately to help to keep the answer logical. In essays, remember to formulate an answer that actually addresses the question posed. Do not be tempted to write the answer to a question you wish 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.

Make sure you plan your time in the examination well to avoid having three good answers and a weak or non-existent fourth answer. 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.
Comments on specific questions

Question 1

‘Clearly the third party cannot qualify as a plaintiff under the bargain theory. He has suffered no detriment at the request of the promisor.’

Critically evaluate the principles of privity of contract.

General remarks

This is a question in relation to the doctrine of privity. It asks you to critically consider the law in this area. It requires a consideration of the origins of the principle, the limitation of the burden in contractual arrangements and whether this was – and still could be – justified.

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


Common errors

Merely reciting the cases in relation to the privity of contract. Then listing the changes made by the Contract (Rights of Third Parties) Act 1999 with no commentary.

A good answer to this question would...

critically consider the cases and their origins. A good answer would take a view of whether the origins of the principle are justified. The creation of certainty in contractual obligations has advantages but as exemplified in classic cases this can cause hardship and defeat the intention of the parties.

Poor answers to this question...

failed to address the critical basis of the principle and merely repeated the facts of earlier cases and then the changes brought about by the legislation.

Question 2

Claudine is a builder and requires materials for a conservatory roof she is building. She is informed by Roofit & Co that they can provide the materials and suggest that Claudine use glass incorporating the latest technology: glass that is only 5mm in thickness but which provides all the heat and security benefits of glass that is 50mm in thickness. In order to ensure that this glass is appropriate for the conservatory roof, Claudine telephones the glass manufacturers, Pilkers Ltd, and their salesman confirms its suitability. Roofit & Co possess the most recent manual for this type of glass which notifies the reader that this glass is not suitable for conservatory roofs. However, Roofit & Co have never read this manual. Claudine also has a copy of this manual but has never read it either. Claudine is impressed by this type of glass and decides to order all her materials from Roofit & Co, who offer her a 20% discount for a bulk order. However, after fitting it to the roof, a bird sits on the glass and the glass shatters into pieces, falling onto Claudine and injuring her badly. She is prevented from working for six months and her customer refuses to pay. This leads to Claudine losing a lucrative contract and future business.

Advise Claudine on her claim against Roofit & Co.
General remarks
This question concerns misrepresentation. You should discuss whether the statement about glass is a representation or a term. There are some clues that this is not a term; some credit would be given if you felt it was a term but the fact that the statement was made before the contract was entered into, that it was only a suggestion and that Claudine verified the details herself suggest that it is more likely to be representation. You need to establish that the representation is an actionable misrepresentation, with close reference to relevant authority, before discussing remedies. The statement is an unambiguous and false statement of fact. It seems to have induced the contract (Claudine’s checking, the statements with Pilkers). You should note that it need not be the sole inducement but can be one of them. There is a good deal to discuss in relation to this inducement being material. Claudine was offered a discount, she verified the details herself, she could check for herself. Good answers would use these facts to make a solid argument.

Once an actionable misrepresentation is established then the next stage is to decide on the nature of the misrepresentation. It may be a fraud but you should explain the disadvantages (the heavy burden of proof on Claudine) and the advantages (no possible claim for contributory negligence). The next logical step would be to consider the Misrepresentation Act 1967. The advantage is that the burden of proof shifts to Roofit. In looking at an action under s.2(1) you should consider whether Roofit had reasonable grounds to believe that the statement was true, and in doing so, consider the case of Howard Marine v Ogden and whether the facts here are distinguishable.

Insofar as remedies under s.2(1), you should discuss the case of Royscott v Rogerson and the significance of this case as to the question of foreseeability. What is the significance of Claudine not reading the manual? Might there be contributory negligence (see Gran Gelato) for a claim here, which is not applicable to a claim in fraud? There should be a brief mention of the limits of a claim for common law negligent misstatement and innocent misrepresentation. The remedy of rescission and its limits also be mentioned.

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

Common errors
A failure to use a logical structure and relevant authority. Contract is an area rich in common law authority, which must be used to establish an argument.

A good answer to this question would…
begin by explaining why the statement as to the glass was a representation and not a term. Then define misrepresentation before analysing whether the statement met all the criteria. After establishing an actionable misrepresentation the classification and relevant remedies for the class of misrepresentation would be dealt with. Good answers always relate the law closely to the given facts.

Poor answers to this question…
failed to use relevant case authority and to explain all the elements of a misrepresentation before trying to classify the nature of the misrepresentation.
Question 3

Hettie bought a ticket to see Les Mondes at the theatre, starring her favourite actress, Carol Prince. Carol Prince developed a sore throat eight days before the show and her understudy replaced her in all performances for the next two weeks. Hettie tried to cancel the cheque she had sent and called the theatre to explain she no longer needed the ticket as Carol was not performing. The theatre owner said that they would hold her seat for her having presented the cheque for payment and no refund would be paid.

However, the night before the show the theatre was flooded when a water main in the road outside burst and the show was cancelled. The theatre still refuse to refund her ticket price.

Advise Hettie on any claims she may have against the theatre and any issues which may arise.

How, if at all, would your answer be different if the flood was caused by the doorman smoking in the auditorium and being unable to turn off the sprinklers that were set off by the smoke?

General remarks

This question raises the issues of anticipatory breach and frustration. Hettie entered into a contract, based on the star of a show. On hearing that the star was not going to be in the show she tried to end the contract. Hettie may claim that the contract was frustrated as an essential element of the contract was missing. However, she is still getting largely what she contracted for (Herne Bay v Hutton). Replacement of actors is a foreseeable event. So you should explain anticipatory breach, as before the time for Hettie’s performance she has tried to terminate her obligation. The theatre can accept this or reject this. Their rejection means that their obligations also continue.

When the theatre is flooded they have either breached their contract or it has been frustrated. You should define frustration and point out that here the venue is no longer available. If this is the case then there is a total failure of consideration so the common law principle of Fibrosa v Fairbairn will apply. You may briefly compare this to the alternative principle of Chandler v Webster, but only to explain it being overruled when there is a total failure of consideration. In that event, the Law Reform (Frustrated Contracts) Act would be applicable if it is not excluded.

In the alternative scenario, the event would be self-induced so this would be a breach and damages would be available.

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


Common errors

Failing to consider the anticipatory breach issue and the events in the first part of the facts. Failing to use the relevant case law in this area.
A good answer to this question would...
deal logically with all the relevant issues and use the relevant case law to support arguments.

Poor answers to this question...
failed to address all the issues. It is important to consider all the facts that are given as raising potential legal issues.

Question 4

Seema places an advert in her local shop window, ‘Five goblets for sale: each £10. Available only to the first five people who pay me this amount by Saturday 1st May’.

Ali sends Seema £10 in the post on Tuesday 27th April and says he will collect one goblet on Monday 3rd May. The letter gets lost in the post.

In the morning of Thursday 29th April Chet telephones Seema and asks if he can buy two goblets for £15. Seema says she needs time to think about this and Chet tells her to let him know by Saturday at 10am. On Thursday evening Seema calls Chet and leaves a message on his answering machine saying, ‘I agree you can have two goblets for £15.’ Chet does not hear the message until Saturday morning.

Being disappointed by the response to the advert, Seema decides to place the remaining three goblets in an auction on Friday 30th April. Seema places a note in her window stating that the goblets are no longer for sale and that they are going to auction.

Chet attends the auction and is delighted to see the goblets for sale. He makes a successful bid and buys the three for £15. He sees Eduord, Seema’s partner, at the auction and says ‘What a bargain I’ve got! I’m glad that Seema didn’t respond to my telephone call’. Eduord calls Seema immediately. She is furious as she was keeping two goblets for Chet. In anger she takes two goblets to a charity shop on Friday evening.

Having seen the advert Diego arrives at Seema’s house on Saturday morning with £10 and is very annoyed to see the note as he planned to give a goblet to his mother as a present. Ali arrives on Monday to collect his goblet.

Advise Seema.

General remarks
This is a question in relation to agreement. You should begin by establishing the nature of the advertisement, with close reference to relevant authority. Specifically, with the certainty issue being discussed and the comments by Parker CJ in Fisher v Bell. Good answers would make reference to this being a unilateral offer with reference to Lefkowitz v Great Minneapolis Stores. If this is a unilateral offer then a revocation would need to follow the principles of Shuey v USA. This case should be read carefully, as the method was not exactly the same.

Seema v Ali – if the advert is a unilateral offer then this can be acceptance. You should explain the general rules in relation to acceptance and then the postal rules, with close reference to authority. These rules apply even if the post is lost, although it may be that Seema has required the communication to actually reach her by the use of the words ‘pay me’. In which case there is no contract with Ali.

If the advert is an invitation to treat then this is an offer which was not communicated, as postal rules only apply to acceptance and not offer.
Seema v Chet – if the advert is an offer then this communication is a counter offer, which Seema needs to accept. The original offer is ended. Seema now needs to communicate acceptance – which is not done until Chet actually receives the acceptance. Discuss the general rules of communication; if this were a commercial context could we argue that the communication is when Chet should have heard the acceptance? This is unlikely in this context. Chet then buys the three goblets at the auction, which was not contentious, and tells Eduord that he no longer wants the two goblets from Seema. Eduord serves to raise the issue of communication of revocation of offer: can it be by a third party and is Eduord able to communicate it? Reference should be made to Powell v Lee, Dickinson v Dodds.

If the advert is an invitation to treat then this is just a straightforward offer and the same applies to communication.

Seema v Diego – if the advert is an offer then Diego is trying to accept as prescribed. He arrives, sees the note, this is actual communication of revocation so there is no need to apply Shuey but credit would be given for explaining how it would operate. Can Seema revoke when Diego has begun to perform and is willing to perform? See Errington v Errington-Woods.

If the advert is an invitation to treat then he is making an offer which she can reject.

Law cases, reports and other references the examiners would expect you to use
Partridge v Crittenden [1968] 1 WLR 1204; Carlill v Carbolic Smoke Ball Co [1893] 1 QB; Hyde v Wrench (1840) 3 Beav 334; Entores v Miles Far East Corp [1955] 2 QB 327; Thomas v BPE Solicitors [2010] EWHC 306; Brinkibon v Statag Stahl [1983] 2 AC 34; Adams v Lindsell (1818) 1 B & Ald 681; Korbetis v Transgrain Shipping [2005] EWHC 1345 (QB); Henthorn v Fraser [1892] 2 Ch 27; Dickinson v Dodds (1876) 2 Ch D 463; Routeledge v Grant (1828) 4 Bing 653; Errington v Errington-Woods [1952] 1 KB 290.

Common errors
Failure to use authority in answers. This cannot gain credit as you are required to refer to relevant cases. With this area you should always consider the alternative issue: what would be the results if the postal rule did apply and if it didn’t apply?

A good answer to this question would…
take the issues logically and clearly set out which parties were being advised. A good answer would deal with the facts clearly, such as noting that Seema’s words in the advert required the money to be paid to her, suggesting that the postal rules would not apply.

Poor answers to this question…
failed to address the facts as given and dealt with the issues without reference to authority. Some candidates who knew the authority made no attempt to apply it to the facts.

Student extract
[the student gave extensive details of Fisher v Bell and Carlill v Carbolic Smoke Ball]

From the above cases the advertisement issued by Seema should be treated as an invitation to treat.

Ali sends £10 to Seema by post and such letter got lost in the post. We can apply for postal rule that acceptance is deemed to be accepted when the letter is posted.
Comment on extract
The first problem is common in examinations. The candidate has given a very
detailed summary of two cases which are relevant to this area. Then there is a line
which concludes that the advert is an invitation to treat. There is no explanation of
why this advert was an invitation to treat, such as perhaps it not being precise, or
incapable of being fulfilled due to limited resources. It is essential that the law
provided in the cases is applied to the facts in the problem question. By this the
candidate can show understanding of the principle.

The next part of the answer states that Ali can use the postal rules for acceptance.
This is illogical. If the advert is an invitation to treat then there is nothing for Ali to
accept. You cannot accept an invitation to treat. This error shows poor planning and
a lack of understanding on the part of the candidate. Making a short plan of the
events and their logical consequences before you begin writing your answer would
avoid this.

Question 5
‘There are not two alternative measures of damage, at opposite poles, but
only one: namely the loss truly suffered by the promisee.’ (Lord Mustill,
Ruxley Electronics & Construction Ltd v Forsyth (1995))

Critically evaluate how damages are awarded in light of the above statement.

General remarks
An essay question based on contractual damages. Here the focus is on the various
measures of damages. There may be some description of how the courts have
established the different heads of damages, expectation, reliance and restitution but
a good answer should critically consider the inclusion of restitution and consumer
surplus in a discussion of the more general measures of expectation and reliance.

Law cases, reports and other references the examiners would expect you to
use
Robinson v Harman (1848) 1 Ex 850; Ruxley Electronics v Forsyth [1996] AC 344;
Hadley v Baxendale (1854) 9 Exch 341; Farley v Skinner [2001] UKHL 49; Jarvis v
Swan’s Tours [1973] QB 233; Anglia Television Ltd v Reed [1972] 1 QB 60; AG v
Blake [2001] 1 AC 268; Experience Hendrix LLC v PPX Enterprises Inc [2003] 1 All
ER 830.

Common errors
Using a pre-prepared answer to a damages question which failed to address the
specific requirements of this question. Candidates often ask for sample answers,
but you must not learn these as if they are the only answer. Another error was
including all the issues in relation to damages, such as remoteness and mitigation,
when the focus here was on the measure of damages.

A good answer to this question would...
focus on the question itself: what is the best measure of damages to give true
compensation? A good answer would deal with the inclusion of the ‘consumer
surplus’ as a loss which flows from a breach of contract, or may focus on restitution
alone. There is no ‘perfect’ answer but the best answers show the candidate’s
understanding by answering the specific question asked.

Poor answers to this question...
failed to address the question or recited all the candidate knew on the issue of
damages, whether it was relevant or not.
Question 6

Rose runs an organic food shop, FreeFrom, and leases her premises from Holly for £2,000 per month. In December, she accidentally slips over and badly breaks her ankle. She is advised by the doctor to stay away from work for six months and needs to employ a temporary shop assistant to work in the shop for six months. This will put her in financial difficulty and means that she will struggle to pay the rent on her shop until she is back at work in July. Rose telephones Holly saying: ‘I will not be able to pay the full rent for the next six months, can I pay a reduced amount of £1,000 per month until I return to work in July?’ Holly agrees to accept the reduced rent since Rose’s shop also sells some of the vegetables Holly grows on her allotment and she does not want the shop to close.

Rose contracts with Ivy to work in FreeFrom for a period of six months, whilst her ankle recovers. Rose’s daughter, Grace, often helps out in the shop and always gets paid by her mother. She spends two weeks working in the shop helping Ivy to learn about the business. Rose is delighted and at the end of the fortnight tells Grace she will give her £500. As a result of her reduced rent, Rose is also able to spend £3,000 on refurbishment to the shop.

Holly accepts the reduced rent of £1,000 for three months and then asks Rose to start paying the full amount of £2,000 again and to repay immediately the £3,000 that she owes for the first three months. Rose tells Holly that she will not accept her demands. She is so worried about her financial difficulties that she tells Grace that she cannot pay her the £500 she promised.

Advise Rose.

General remarks

The issue here was the enforceability of the arrangements between Rose and Holly and Rose and Grace. The second arrangement also raises the issue of intention to create legal relations. The answer could begin with a short definition of consideration, with reference to relevant authority.

Rose v Holly – you should discuss whether there is consideration for promise by Holly to accept the reduced rent. Good answers would discuss whether the principle of factual benefit of Williams v Roffey Bros applies to the facts here and the limits to that doctrine (if there are any) identified in Re Selectmove. You should then explain the principle of Foakes v Beer / Pinnel’s Case and the common law approach to such promises. Here it could be argued that selling vegetables in the shop is an extra benefit for Holly. This logically comes before moving to equity.

You should then discuss whether Holly can be estopped from denying the promise to accept less, including whether there is reliance on the promise and whether it would be inequitable to go back on promise (in light of her expenditure). This requires close reference to relevant authority.

Rose v Grace – you should also discuss whether the promise to Grace is enforceable or whether it is past consideration and unenforceable. If it is unenforceable for lack of consideration, you should explore whether the doctrine of implied assumpsit is applicable. With application to the principles in Pao On the first two elements can be considered on the facts, such as previous payments. The third element of the agreement being valid apart from the problems of consideration could usefully lead to consideration of the intention to create legal relations. You could note issues such as the impact the familial relationship has on any liability and the significance of Grace’s previous payments for working in the shop.
Law cases, reports and other references the examiners would expect you to use

Common errors
Failure to use relevant cases and think logically about the facts given. It is essential that the facts presented in the problem scenario are applied to the principles from the relevant authority.

A good answer to this question would...
begin with a logical explanation of the issue of consideration and then explain clearly how the facts were applicable to the law. There would be consistent use of relevant authority.

Poor answers to this question...
began with long introductions, some over a page, on the general principles of consideration. This may show knowledge but does not show understanding of the law which is the key requirement in answering a problem question. As with other questions, some candidates failed to use cases to support their arguments.

Question 7
Agatha telephones Brian to order a ‘Betahouse’ food blender, the latest device for perfect baking. Brian mishears this and thinks she wants a ‘Bekahaas’, the standard blender. Brian tells Agatha that he has one for £200 and Agatha is delighted at this price as this is much less than the normal cost of a ‘Betahouse’ blender, which is £800. She tells Brian to put it aside for her and she will be in at 5pm that day to collect it.

Later Agatha, who runs a shop selling antiques, receives a telephone call from someone claiming to be Polly Petty, a famous antiques collector and television celebrity and the host of a television programme about antiques. ‘Polly Petty’ asks if Agatha’s wonderful Russian Blue clock is for sale as she would like to buy it to make an episode of her television show about it. Agatha is very flattered and delighted as ‘Polly Petty’ is willing to pay top price. In fact, ‘Polly Petty’ is a rogue called Hetty.

When ‘Polly Petty’ arrives Agatha is so star struck that she asks for publicity shots to be taken, which Polly happily agrees to. Agatha loads the clock into Polly’s car and then Polly produces her cheque book. Although Agatha is reluctant to take a cheque for such a large amount she does not want to miss the opportunity for such good publicity.

Agatha then arrives at Brian’s shop and discovers that a Bekahaas has been set aside for her and she refuses to accept it. Then later, at the bank she discovers that the cheque is a forgery. On the way home she sees her Russian Blue clock in Zayn’s second hand shop. She goes in and demands he return it to her.

Advise Agatha.

General remarks
The issue here is mistake. Briefly explain the consequence of mistake on a contract – making it void and not voidable.

Agatha v Brian – mistake which was mutual at cross purposes. It could be argued that Agatha snatched at a bargain as the price was considerably lower, with
reference to relevant case law. Generally, a discussion of the requirements of mistake here is relevant.

Agatha v Zayn – there is clearly a fraud by Polly but as she has disappeared this is of no use, so you should not focus on misrepresentation. This would only make the contract voidable and on the facts the property had been sold to Zayn before Agatha realised the deceit. Misrepresentation makes the contract voidable so Zayn obtained good title if there was a contract. To have a claim against Zayn then she must prove that he never obtained good title, as there was no contract between Agatha and Polly. Then unilateral mistake to identity: was it a fundamental mistake or just as to finances? This should include a discussion of distance or face to face contract.

**Law cases, reports and other references the examiners would expect you to use**
*Smith v Hughes* (1871) LR 6 QB 597; *Raffles v Wichelhaus* (1864) 2 H&C 906; *Shogun Finance v Hudson* [2003] UKHL 62; *Cundy v Lindsay* (1878) 3 App Cas 459; *Phillips v Brooks* [1919] 2 KB 243; *Ingram v Little* [1961] 1 QB 31; *Bell v Lever Bros* [1932] AC 161; *Leaf v International Galleries* [1950] 2 KB 86; *Great Peace Shipping v Tsavliris* [2002] EWCA Civ 1407.

**Common errors**
Only dealing with misrepresentation, which, on a clear understanding of the principles, would not have helped in a claim against Zayn. Also, there was no issue of the Sale of Goods Act, as Brian did not make any guarantees as to the blender. There was a misunderstanding.

**A good answer to this question would...**
understand the issues which were relevant and what Polly would need to do to avoid the contractual obligation to buy the blender and recover the property from Zayn.

**Poor answers to this question...**
failed to spot the issues in the question, only dealing with misrepresentation, which shows a lack of understanding as to the consequences of both misrepresentation and mistake.

**Question 8**

Simone has a dairy farm business and attends a meeting with Rita, the manager at Freshco, a large national supermarket to whom Simone wishes to sell her milk. Rita is impressed by Simone and wants to do business with her. Rita agrees to contract with Simone for a period of six months. She hands Simone the standard Fresco order form which details the quantity of milk Simone is required to supply each week and the dates on which it is to be delivered to the supermarket. Simone is thrilled to have this business opportunity and signs the order form immediately. Unbeknown to her, on the back of the order form, in very small print, it reads:

**Clause 1.1** ‘Freshco reserves the right to cancel the order at any time.’

**Cause 1.2** ‘Freshco limits its liability for any damage whatsoever and howsoever caused in the performance of its contractual obligations to £100.’

After two weeks, Simone receives a telephone call from Polly telling her that Freshco wishes to cancel all future orders with immediate effect. Simone is extremely upset and slams the phone down. Rita decides to drive over to Simone’s farm to check that she is alright. As she arrives, however, her car
slips in the mud and crashes into Simone's barn, causing £5,000 worth of damage.

Advise Simone.

General remarks
This question deals with the incorporation of terms into a contract, whether the terms are applicable to the circumstances that have arisen and the statutory regulation of the terms. To begin, you could identify the issues facing Simone: the cancellation of the contract and the damage to her barn.

You should first discuss whether terms have been incorporated into the contract. Most relevant here is whether the document (order form) is one which could be expected to have contained contractual terms. As the form has been signed it may be difficult to deny incorporation but reference can be made to the onerous nature of the terms and if this requires further steps to be taken by Rita, on behalf of Freschco, to bring this to Simone’s notice. It could be useful to point out that as they are both business people this will be difficult for Simone to argue.

If incorporation can be established you would need to discuss whether the terms cover the breaches that arose – particularly relevant here is whether Rita was acting ‘in the performance of contractual duties’ when she damaged the barn, as clause 1.2 specifically refers to liability arising in those circumstances. This point was rarely noted by candidates, who instead focused on the wide nature of the terms, ‘whatsoever and howsoever’ as part of the construction argument. Statutory control over terms must then be examined. Since Simone is not a consumer only UCTA is relevant and candidates should be able to examine the applicability of s.3(2)(b)(i) and associated case law as well as s.2(2) and s.11 (in the event that circumstances of accident might be held to fall within exclusion clause). One key issue was that UCTA only covers attempts to exclude or limit liability for a breach and therefore does not directly cover clause 1.1.

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

Common errors
Failure to address the common law clearly and to move directly to the statutory provision. In relation to the statutory provisions many candidates broadly applied UCTA to clause 1.1 when this is not an exclusion clause. Also, some candidates just considered s.11 UCTA on reasonableness rather than explaining how this section could be used. It is not a standalone section and you can only apply this via sections such as s.2 and s.3.

A good answer to this question would…
identify the issues facing Simone and clearly deal with the common law before moving to the relevant statutory provisions, perhaps with a line saying why UTCCR does not apply.

Poor answers to this question…
failed to deal with the issues logically or to deal with the common law. Although this may seem irrelevant in practice, as the legislation covers so much, it has limitations. For example, the limits of UCTA for clause 1.1 and how to use the common law in
this area. Again, many candidates failed to refer to the wide range of relevant cases in this area.

**Student extract**

Simone would like to know his rights and obligations and whether the exemption clauses can be included and if he can be exempted from liabilities.

Under s14(2) Sale of Goods Act 1979 (SOGA) the seller cannot exempt liabilities should supply goods with satisfactory quality.

In s14(2C) exemptions are that the defect is drawn to the party’s attention and the party is given the opportunity to examine the goods.

In s14(2A) ‘satisfactory quality considers description’

**Comment on extract**

The candidate began well by identifying one of the parties. However, the opening lines show a misunderstanding in claiming that ‘he’ can be exempted from liability – it is Frescho who have the liability.

The candidate then goes on to list the elements of the Sale of Goods Act, when this is not relevant to the facts. There was no discussion of the actual events, cancelled orders and the damage to Simone’s property. It is important to answer the question that is asked and not the one that you had hoped would be asked.