Note to Candidates and Tutors:

The purpose of the suggested answers is to provide students and tutors with guidance as to the key points students should have included in their answers to the June 2014 examinations. The suggested answers do not for all questions set out all the points which students may have included in their responses to the questions. Students will have received credit, where applicable, for other points not addressed by the suggested answers.

Students and tutors should review the suggested answers in conjunction with the question papers and the Chief Examiners’ reports which provide feedback on student performance in the examination.

SECTION A

1. A bilateral contract is a contract in which both/all parties assume an obligation.

2. A third party may be able to sue on a contract under Contract (Rights of Third Parties) Act 1999 if:
   - Contract expressly states that he/she may
   - Term purports to confer a benefit on him/her

3. Exceptions to the rule that acceptance of an offer must be communicated to the offeror could include:
   - Acceptance by conduct as in Brogden v Metropolitan Railway (1877)
   - Unilateral contracts where the offeror waives the rule as in Carlill v Carbolic Smoke Ball Co (1892)
   - When the postal rule applies as in Adams v Lindsell (1818)
   - Probably acceptance by e-mail etc as in Brinkibon Ltd v Stahag Stahl und Stahlwarenhandelsgesellschaft mbH (1982)

4. (a) Consideration could be defined as either:
   - A benefit to one party or a detriment to the other as in Currie v Misa (1875)
   - The price for which the other party’s promise is bought as in Dunlop v Selfridge (1917)

(b) Consideration:
   - Must move from the promisee
   - Must not be past
   - Must be sufficient (but need not be adequate)
5. There is a presumption against an intention to create legal relations in social/domestic contracts as in the case of Jones v Padavatton (1969). In business contracts the presumption is against such an intention as in Edmunds v Lawson (2000). Both presumptions are rebuttable.

6. Factors which may make a statement a term rather than a representation include the following, any two of which could have been explained:

- The importance attached to the statement as in Bannerman v White (1861);
- The reduction of the statement into writing as in Birch v Paramount Estates Ltd (1956);
- A short period of time between the statement and the contract as shown in Routledge v McKay (1954);
- Specialist skills or knowledge of the statement maker as in Oscar Chess v Williams (1957); or
- The manner in which the statement was made as in Ecay v Godfrey (1947).

7. An ‘innominate term’ is neither a condition or a warranty. Court will adopt a ‘wait and see’ approach. Court will decide its status by considering the consequences of a breach. A relevant case could be Hong Kong Fir Shipping Co Ltd v Kawasaki Kisen Kaisha Ltd (1962).

8. A statement may amount to a fraudulent misrepresentation if it is made:

- without belief in its truth;
- with reckless carelessness as to whether it is true or false; or
- knowing it to be false.

9. Any two of the following ways in which a contract may be discharged by frustration should have been identified:

- destruction of the subject matter;
- illness or death of a party;
- a supervening illegality;
- an event, the sole reason for the contract, not taking place; or
- government interference.

10. Any two of the following requirements for claiming damages could have been cited:

- the breach caused the loss.
- the loss was not too remote as in Hadley v Baxendale (1854).
- the innocent party has attempted to mitigate the losses claimed.

**SECTION B**

**Scenario 1 Questions**

1. (a) An agreement involves both offer and acceptance. A good answer would have gone on to define an offer as a statement of terms by which the offeror is prepared to be legally bound and either explain or illustrate this definition. It would have continued by defining acceptance as unconditional assent to the terms of the offer and then either explained or illustrated this definition, too.
(b) A good answer would have identified that advertisements such as the card in the shop window are usually invitations to treat and then proceeded to explain the meaning of an invitation to treat as an invitation for another to make an offer. A relevant case could have been *Partridge v Crittenden* (1968).

(c) This part of the question required application of the relevant law to the facts of the scenario. Thus, the card in the shop window was an invitation to treat only and Iannis’ telephone message constituted the offer, here. As Fiona has not accepted the offer there is no binding agreement to walk Iannis’ dogs.

2. A good answer would have identified that consideration must not be past and the doctrine of implied assumpsit. It would then have continued to apply that law to the given scenario. Thus:

- The promise to pay £20 was not made until after the dogs had been walked
- Fiona walking the dogs is past consideration which is not normally enforceable
- Here both parties presumably expected some payment to be made
- Also the act was performed at Harry’s request
- A specific promise for payment was later made

The answer should then have reached a conclusion that implied assumpsit would probably apply here and that Fiona can therefore enforce payment as she has given valid consideration. A relevant case regarding past consideration could be *Re McArdle* (1951).

3. This question required application of relevant law to the given scenario. Thus:

- Edward & Fiona have reached agreement – offer & acceptance.
- Consideration exists e.g: Edward’s promise to pay half and Fiona’s promise to do the same.
- Edward & Fiona are friends so there is a presumption, here, against intention to form a legal relationship.
- Fiona would therefore have to rebut the presumption before she could claim the money.

A relevant case here could be *Jones v Padavatton* (1969).

An alternative answer to this question could have been that, as Edward and Fiona were entering a business relationship, there would be a presumption in favour of an intention to create legal relations and a relevant case in support could have been *Rose and Frank v JR Crompton* (1925). Credit would have been given for such an answer.

4. (a) The doctrine of privity of contract provides that only the parties to a contract may sue or be sued upon it as in the case of *Tweddle v Atkinson* (1861).

(b) A good answer would have identified that Greta is not a party to the contract and that she is therefore unlikely to be able to sue upon it as only a party to the contract may do so. It would also have identified the *Contracts (Rights of Third Parties) Act 1999* and considered whether
or not this contract purports to confer a benefit on Greta e.g: is she named in it? A reasoned conclusion should then have been given.

5. (a) The purpose of damages for breach of contract is monetary compensation to put the injured party back in the same position as if the contract had been performed.

(b) Edward may claim pecuniary damages for the substitute dog leads. A good answer would have continued to discuss whether or not Edward’s losses are too remote and the difference in price of the replacement dog leads. A reasoned conclusion should then have been given.

Scenario 2 Questions

1. (a) A good answer would have identified and explained that an implied term may be incorporated into a contract:

- By statute as in the Sale of Goods Act 1979;
- By custom as in the case of Hutton v Warren (1836); or
- By the courts as in the case of Liverpool City Council v Irwin (1976).

(b) This part of the question required application of the law relating to the incorporation of a customary term. The court considers various criteria when deciding whether to imply a customary term. A good answer would have considered some or all of the following:

- the duration of the use of the term;
- whether it is reasonable to imply the term;
- whether the term is inconsistent with an express term;
- whether such a term is actually used in practice; and
- whether the implication of such a term is acceptable to the court.

A reasoned conclusion should follow. A likely conclusion, here, is that the term would probably be implied by custom and that Mike would be entitled to receive payment.

2. (a) An exclusion clause may be incorporated into a contract:

- by signature as in the case of L’Estrange v Graucob (1934);
- by notice, either actual notice as in Olley v Marlborough Court Hotel (1949) or reasonable notice as in Parker v The South East Railway Co (1877); or
- by course of dealings as in Hollier v Rambler Motors (1972).

(b) This part of the question required application of the law to the given scenario. A good answer would have considered that:

- the notices containing the exclusion clause were inside the car park only;
- the contract was entered into when Ken entered the car park;
- actual notice was not therefore given until after the contract commenced;
- the term is onerous and therefore clear notice is expected from the owner; and that
- clear notice was probably not given here and therefore a suitable conclusion could be that the notices were not incorporated into the contract.
Relevant case law could have been Olley v Marlborough Court Hotel (1949) and Thornton v Shoe Lane Parking Ltd (1971).

3. (a) A representation is a statement made outside the contract which may induce a party to enter into a contract. A term is a statement incorporated into the contract. In deciding whether a statement is a representation or term a court will consider:

- the importance attached to the statement;
- whether the statement has been reduced into writing;
- the timing of the statement; and
- whether the parties involved in the negotiations have special knowledge/skills.

Relevant case law could include Bannerman v White (1861), Birch v Paramount Estates Ltd (1956), Routledge v McKay (1954) or Oscar Chess v Williams (1957).

(b) A good answer would have defined misrepresentation as an untrue statement of fact inducing someone to enter into a contract. It would then have identified the three types of misrepresentation, namely:

- fraudulent;
- negligent; and
- innocent.

(c) This part of the question required application of the law to the given scenario. Thus a good answer would have identified that the statements here appear to be representations – made before the contract. It would also, however, have considered any contra indications e.g:

- The importance of the statements; and
- Oliver’s special knowledge/skills.

Then, it would also have identified:

- the fact that that the statements are untrue (age, mileage);
- that they are statements of fact which appear to have induced Ken to enter into contract; and
- that they are therefore likely to be misrepresentations.

The misrepresentations could be fraudulent:

- if Oliver made a knowingly false statement, or
- made it without belief in its truth, or
- made it with reckless carelessness as to its truth.

The misrepresentations could be negligent:

- If Oliver cannot establish that he had reasonable grounds to believe the statement to be true, and that
- he did believe it was true up to the time of the contract.

The misrepresentation could also be innocent if Oliver had reasonable grounds for believing it to be true.
Scenario 3 Questions

1. (a) An entire contract is a contract in which payment depends upon performance of the whole contract. A relevant case could be *Cutter v Powell* (1795).

   (b) This part of the question required application of the law to the given scenario. Thus:

   - The contract, here, is likely to be an entire contract;
   - Roger is only entitled to payment on complete performance;
   - Roger has not done what he agreed to do;
   - Therefore he is probably not entitled to payment of all or any part of the £4,000.

   A relevant case law could be *Bolton v Mahadeva* (1972).

   Credit would have been given for an alternative answer based on s13 Supply of Goods and Services Act 1982, leading to a reasoned conclusion.

2. (a) The exceptions to the general rule that a contract should be performed entirely should have been identified and explained. They include:

   - **acceptance of** partial performance; a party who accepts incomplete performance of a contract will be obliged to pay the other party for what he has done so far. However, the exception does not apply where the first party has no real choice in the matter as in the case of *Sumpter v Hedges* (1898).
   - substantial performance; where part of the job has been done badly but this is not sufficiently serious to amount to a failure to perform at all as in the case of *Hoenig v Isaacs* (1952).
   - prevention of performance; the person who is prevented from completing the contract by the other party may sue for the work done to date as in *Planché v Colburn* (1831).
   - divisible/severable contracts where the contractual obligations can be divided up into parts so that a party can claim payment on completion of a part. This often applies in building contracts.
   - tender of performance where a party attempts performance which is rejected by the other party as in *Startup v Macdonald* (1843).

   (b) This part of the question required application of the relevant law to the given scenario. Thus:

   - Stuart has carried out substantial performance;
   - Faults are not serious enough to amount to failure to perform;
   - Stuart will be entitled to payment of £1,650 (£1,800 less £150 to put right).

   (c) This part of the question required application of the relevant law to the given scenario. Thus:

   - Stuart has started work on the outside of the house;
   - He is being prevented by Parmjit from completing the work;
   - He is entitled to be paid for the work so far done to the outside of the house.
3. (a) A good answer would have identified the **Supply of Goods and Services Act 1982** and in particular:

- **s13**: an implied term that the supplier will use reasonable care and skill in carrying out the service supplied.
- **s14**: an implied promise that the services will be performed within a reasonable time unless a time is fixed, when it should be adhered to.
- **s15**: an implied promise to pay a reasonable charge.

(b) This part of the question required application of the relevant law to the given scenario. Thus:

- the excursions arranged were by bus.
- reasonable care and skill was not taken in booking excursions as requested.
- likely to be a breach of **s13**.
- **s14** and/or **s15** are probably not relevant here.

4. (a) A good answer would have identified pecuniary damages and both:

- Loss of bargain/expectation loss; damages to put claimant in the same financial position as if the contract had been performed; and
- Reliance loss; sums spent by the injured party in reliance on the other party fulfilling his obligations as in *Anglia Television v Reed* (1972).

It would also have identified non-pecuniary damages; i.e:

- Where the contract is for pleasure, relaxation, peace of mind and freedom from distress as in *Jarvis v Swan Tours* (1973); or

(b) Again, this part of the question required application of the relevant law to the given scenario. Thus:

- The object of this contract was pleasure, relaxation etc.
- Parmjit and her mother suffered disappointment/distress caused by being unable to participate in the excursions arranged by bus.
- The holiday was for benefit of mother as well as Parmjit
- Parmjit can therefore claim on mother’s behalf

A relevant case law could be *Jackson v Horizon Holidays* (1975). Privity of contract and the **Contracts (Rights of Third Parties) Act 1999** could also have been referred to and the fact that the contract may have purported to confer a benefit on Parmjit’s mother.