

Test Chapter 2 - Resolving Conflict on the marketplace

1 (2017)

1.				<table border="1"> <tr> <td>1</td> <td>2</td> <td>3</td> <td>4</td> <td>5</td> </tr> <tr> <td>E</td> <td>A</td> <td>B</td> <td>C</td> <td>F</td> </tr> </table>	1	2	3	4	5	E	A	B	C	F	10
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E	A	B	C	F											

2 (2013)

(A)	<p>(i) Explanation of ‘data protection’.</p> <p>(ii) The functions of the ‘data protection commissioner’</p>	<p>6 marks (4+2)</p> <p>2 functions @ 7marks (4+3)</p>	20
(B)	<p>Evaluation of any two</p> <p>(i) Small Claims Court</p> <p>(ii) Labour Relations Commission</p> <p>(iii) Employment Appeals Tribunal.</p>	<p>10 marks ((4@2)+2 evaluation)</p> <p>10 marks ((4+4)+2 evaluation)</p> <p>10 marks ((4+4)+2 evaluation)</p>	20
(C)	<p>Explanations/ illustrations of:</p> <p>- Agreement (8m)</p> <p>- Legality of form (6m)</p> <p>- Consideration (6m)</p>	<p>8 marks (3+3+2)</p> <p>6 marks (3+3)</p> <p>6 marks (3+3)</p>	20

(A) (i) Explain the term "data protection" under the terms of the Data Protection Acts 1988 and 2003.

- Data protection is the means by which the **privacy rights** of individuals are **safeguarded** in relation to the processing of their personal data.
- The essence of data protection is that everybody should be able to control how information about them is used.
- It ensures that personal data which is processed is accurate and it enforces a **set of standards** for the processing of such information.
- It includes both **automated data and manual data**.
- The information held must be accurate, up-to-date, appropriate security measures must be in place to safeguard it and it should only be held as long as is necessary.
- The rights of individuals cannot be subjected to automated decision making; there must be human input in the making of important decisions relating to an individual.

(ii) Discuss the functions of the 'data protection commissioner' under the terms of this act.

- The data protection commissioner has **enforcement powers** including the serving of legal notices compelling data controllers to provide information needed and to correct personal data.
- The data protection commissioner **may investigate complaints** made by the general public and can authorise officers to enter premises and to inspect the type of personal information kept, how it is processed and the security measures in place.
- The data protection commissioner **publishes an annual report** which names in certain cases those data controllers that were the subject of investigation or action by his Office.
- The data protection commissioner maintains a **register of data controllers** giving general details about the data handling practices of many important data controllers, such as Government Departments and financial institutions.

- **Special Duties set out by the Minister:** The data protection commissioner shall also perform any functions in relation to data protection that the Minister may confer on him or her by regulations for the purpose of enabling the Government to give effect to any international obligations of the State.
- **Information Notices:** The Data Protection Commissioner may require any person to provide him with whatever information the Commissioner needs to carry out his functions, such as to pursue an investigation.
- **Prohibition Notice:** Under section 11 of the Data Protection Acts, 1988 and 2003, the Data Protection Commissioner may prohibit the transfer of personal data from the State to a place outside the State.
- **Appoint an Authorised Officer:** Under section 24 of the Data Protection Acts, 1988 and 2003 the Data Protection Commissioner may appoint an "authorised officer" to enter and examine the premises of a data controller or data processor, to enable the Commissioner to carry out his functions, such as to pursue an investigation.

(B) Evaluate any two of the following legislative approaches to solving conflict:

(i) Small Claims Court

The small claims court deals with consumer claims and business claims relating to goods or services purchased for private use, up to a maximum value of €2,000.

It is possible to pursue small claims through this service against product and service providers in any EU state, except Denmark.

How does the small claims court operate?

- Both sides in the dispute get to make their case and are encouraged to reach an agreed settlement. No solicitors are required.
- Decisions made by the registrar of the court are not legally binding but are usually accepted.
- Appeals can be made through the District Court and heard before a judge.

Evaluation: Own judgement required

(ii) Labour Relations Commission

The Labour Relations Commission (LRC) is responsible for **promoting good industrial relations practices and procedures** through the provision of a range of services to employers, trade unions and employees.

How does the Labour Relations Commission operate?

- Conciliation Service/Workplace Mediation Service – voluntary process/ independent third party mediates/outcomes reached by consensus/not legally binding.
- Rights Commissioner Service – single/small group of employees/issues connected to minimum wages, safety at work.
- Industrial Relations Advisory Service – grievance procedures/codes of best practice.
- Appointment of Equality Officers and the provision of staff and facilities for them to investigate issues in relation to discrimination.
- Reviewing and monitoring developments in the area of industrial relations.

Evaluation: Own judgement required

(iii) Employment Appeals Tribunal.

The Employment Appeals Tribunal is an independent body set up to provide a fair, inexpensive and informal means **for individuals** to seek remedies for alleged infringements of their statutory rights in relation to employment, equality and industrial relations rights.

How does the Employment Appeals Tribunal operate?

- The written determinations (decisions) of the Employment Appeals Tribunal are final and conclusive; they are subject only to the appropriate avenue of legal appeal.
- Where an employee is successful with a case taken under the Unfair Dismissals Act s/he may be reinstated, redeployed to a different job in the firm or in different branch of the firm, or receive financial compensation for income lost up to a maximum of 2 years' pay.

Evaluation: Own judgement required

Note: The Future

It is planned that in 2013 a Workplace Relations Commission will bring together the existing services of the Labour Relations Commission, Rights Commissioner Service, Equality Tribunal, the National Employment Rights Authority and the first instance functions of the Employment Appeals Tribunal. The Labour Court will be the single appeal body for all workplace relations appeals, including those currently heard by the Employment Appeals Tribunal.

(C) Illustrate your understanding of the following terms, in relation to a valid contract: agreement; legality of form; and consideration.**Agreement:**

For agreement to exist there must be a clear, complete and unconditional offer and acceptance of that offer.

Offer: A promise to be bound provided the terms of the offer are accepted. The offer can be made orally, in writing, or by conduct and is a clear indication of the offeror's willingness to enter into an agreement under specified terms.

E.g. The price of the second-hand car was €9,000; Joe (**the buyer**) offered €9,000 for the car.

Acceptance: The party answering the offer agrees to the terms of the offer orally, in writing, or by conduct.

Offer must be accepted and taken up by other party as it stands, without any conditions.

E.g. Michael (**the seller**) accepts Joe's offer of €9,000.

Legality of form:

Certain contracts, to be considered legal, must be drawn up in a particular manner. Some contracts must be in writing if they are to be legally valid.

These include:

- Insurance policies
- Hire Purchase agreements
- The sale of property or land
- Share transactions
- Consumer credit and bank loans.

Consideration:

Each party in a contract must give something of value to the other party. Something of value must be exchanged.

So long as consideration exists, a court of law will not question its adequacy, provided it is of some value.

E.g. Joe pays Michael €9,000 and receives a car.

Consideration is usually some monetary payment but it could also be something valuable exchanged as part of the contract.

- (C) Describe how conflict between an employer and an employee could be resolved in a non-legislative manner.

A Non-legislative approach should be the first strategy in a conflict resolution process between employees and employer.

It means that the parties involved are not using any law or body set up under a law to resolve the conflict.

Meet and talk. This involves having a **meeting** between the individual employee and his/her employer to try and discuss the situation and clarify any difficulties. Assistance can be sought from the shop steward and/or the Human Resource Manager (grievance procedure). Employee may seek help from the union head office and the employer may seek help from IBEC.

Negotiation/agreement

Discussion occurs between the disputants who are trying to work out a solution to their problem. The employer and the employee make a series of offers and counter offers intended to aim at a compromise. Both need to be aware of their bottom line and their ideal outcome. They need to be prepared to make **concessions/compromises**. A timetable for the conclusion of the negotiations process needs to be put in place.

Independent Third Party Intervention:

- Conciliation. The conciliator will speak to the employer and the employee separately and then together, highlighting the others point of view. The conciliator encourages the parties to settle the dispute through continued negotiation.
- Mediation. The mediator presents his/her own proposals/recommendations to resolve the conflict. It is a useful form of intervention if both parties are in 'lock-jam' and are not prepared to listen any longer to each other. However, the parties themselves must solve the dispute.
- Arbitration. With arbitration both sides in the disagreement agree beforehand to an independent third party's intervention, investigation and judgement. They also agree before hand on whether the arbitration outcome should be binding or non-binding.

(15 marks)

- (C) In relation to the law of contract, illustrate your understanding of *capacity to contract*.

Capacity to contract means that all natural persons (human beings) and legal/corporate persons, such as companies, have the legal right to enter into a contract.

The contractual capacity of a company comes from its Certificate of Incorporation (separate legal entity). If the company acts beyond its legal powers it is said to be acting '**Ultra Vires**'.

The following generally have **not** the capacity to contract:

- **Infants (those under 18 years of age) except in certain cases e.g. necessities**
- **Persons under the influence of drink or drugs**
- **Insane persons**
- **Bankrupt persons**
- **Diplomats.**

5 (2009)

Consideration means that some advantage or benefit must move from one party of the contract to the other party.

Consideration refers to what changes hands (is exchanged) between buyer and seller e.g. the purchase of a CD for €20 from your local music shop. The buyer gives €20 to the seller and in return gets a CD.

Consideration may refer to money or goods of any value exchanged between parties. It is a necessary prerequisite for a valid contract.

(b) Outline two other elements of a legally binding contract.

Outline two of the following (sentence required):

- (i) Agreement (Offer and Acceptance)
- (ii) Intention to Contract
- (iii) Capacity to Contract
- (iv) Legality of Form
- (v) Legality of Purpose
- (vi) Consent to contract

6 (2008)

2. An offer is a promise by the person making the offer to be bound by the contract, if the offer is accepted properly.

An Invitation to Treat is only an invitation for someone to make an offer, which can be either accepted or rejected. Goods on display are only inviting customers to make an offer. They can do so by bringing the goods to the checkout and offering to buy them.

7 (2007)

(C) Specific Performance (explain and when used):

Specific Performance is a remedy for the breach of a contract. The party in breach of a contract would be ordered by a court to carry out its agreed contractual obligations. In a contract for the sale or lease of land, use of this remedy may be appropriate.

8 (2006)

(C) Elements of valid contract (explain)

1. Agreement (Offer and Acceptance)
2. Consideration
3. Intention to Contract
4. Consent
5. Capacity to Contract
6. Legality of form
7. Legality of purpose.

9 (2005)

1. Capacity to Contract

The parties to a contract have to have the capacity to make the contract. All natural persons, (human beings), and legal/corporate persons, such as companies, have contractual capacity.

The following normally do not have the capacity to contract:

- Infants (those under 18 years of age).
- Persons under the influence of drink or drugs.
- Insane persons.

These people are all deemed to be incapable of making valid contracts ie they do not understand fully what they are doing and if they do enter a contract then it is void. The contractual capacity of a company is laid down in the objects clause of the memorandum of association of the company. If the company acts beyond these powers, e.g. gets involved in a business activity not permitted in the memorandum of association, then it is said to be acting 'Ultra Vires' and the contracts are void.

10 (2005)

(B) Termination of Contract

A contract is said to be terminated (ended) when all the responsibilities and obligations that arose under the contract and all rights that existed under the contract are extinguished. A contract may be terminated:

By Performance

A contract is terminated by performance where the undertaking given in the contract has been performed exactly as was promised by the parties to it ie. that whatever was agreed to be done was done.

By Agreement

The parties may agree to end a contract because of:

The operation of one of the terms of the contract, eg where a term provides that the parties mutually agree to the termination or where a certain period of notice is given.

By the making of a further, later, binding contract by the parties. A completely new contract now exists and the parties agree to give up their rights under the old one. All obligations can be released by agreement of the parties.

By Breach

If one of the parties does not perform his/her side of the bargain ie does not honour the promises made, the contract is said to have been repudiated. The party is in breach of the conditions agreed. The second party has the right of action in the courts against the first party who caused the breach.

By Frustration

There is a basic general rule which states that a party to a contract will not be allowed to get out of their contractual obligations simply because the contract is more difficult to perform due to some unforeseen event. The possibility of all events happening should be set out in the contract. Performance however may sometimes be impossible because of something completely outside the control of the party, eg a war or a fire where the goods that are the subject of the contract are completely destroyed. The contract becomes impossible to perform since the object has been destroyed. Also the death or serious illness of one of the parties to the contract may hinder the performance of the contract or a change in the law

could make the performance of the contract illegal. In these cases the contract is terminated by frustration.

11 (2004)

1. 5 + 5 marks

1. Arbitration: Arbitration is where the settlement of a dispute (conflict) is sent before one or a group of independent (impartial) persons for adjudication. The parties to the dispute agree in advance to the arbitration process and that the arbitration decision will or will not, be binding on them.

The main type of disputes dealt with by arbitration are ones that concern:

The conditions of general contracts. e.g. travel agents with customers for holidays, building contracts for houses, etc. Industrial relations agreements between (employees) trade unions and employers.

Conciliation: The conciliation process gets the two sides in dispute to listen to each other's points of view, to discuss the issues and negotiate an agreed settlement before the dispute grows into a serious one.

In the case of a conflict, e.g. of an industrial relations nature, it means the voluntary coming together of the parties to the dispute in the interest of resolving the conflict. Once the agreement is made it is not a legally binding one but its aim is to resolve the dispute without strike action.

One of the main functions of the Labour Relations Commission, a body set up under the Industrial Relations Act 1990, is to provide a conciliation service to help resolve industrial relations difficulties.

1.	<p>(i) <u>REFUNDS</u>, replacements and repairs are forms of redress available to a consumer under the Sale of Goods and Supply of Services Act 1980.</p> <p>(ii) The <u>SMALL CLAIMS COURT/SMALL CLAIMS PROCEDURE</u> provides a solution to consumer conflicts and can award compensation up to €2,000.</p> <p>(iii) The term merchantable quality in consumer law implies that consumer products are of a reasonable quality having regard to their <u>PRICE /DURABILITY</u>.</p> <p>(iv) The <u>NATIONAL CONSUMER AGENCY / COMPETITION AND CONSUMER PROTECTION COMMISSION</u> is responsible for investigating, enforcing and encouraging compliance with consumer law.</p> <p>(v) The Sale of Goods and Supply of Services Act 1980 states that all providers of services will supply a service with <u>DUE SKILL/ DUE CARE/ DUE DILLIGENCE/ having the necessary skills to render the service/where materials are used they will be sound and reasonably fit for the purpose for which they are required/that the goods supplied (with the service) will be of merchantable quality.</u></p>	<p>10 3+2+2+2+1</p>
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A. (i) Explain the term **co-operative relationship** between stakeholders in a business.

Question			Possible Responses	Max Mark
1	(A)	(i)	A co-operative relationship exists where both parties work together to achieve a common goal . It is a win-win relationship/mutual benefit , where both sides gain and are better off afterwards than they were before.	(2+3)

(A) (ii) Describe **one** example of a co-operative relationship which could arise between **each** of the following pairs of stakeholders:

- Employer and employee
- Investor and Manager of a business
- Producer and consumer.

Question			Possible Responses	Max Mark
1	(A)	(ii)	<ul style="list-style-type: none"> • <u>Employer and Employee</u> <p><u>A fair wage, which reflects work being done and qualifications and skills of employees, is offered by the employer and a fair day's work is provided by the employee.</u></p> <p>Wages/Good pay and conditions of work</p> <ul style="list-style-type: none"> • Employee benefits from being rewarded good pay and conditions for their work if they meet agreed targets. • Employer benefits from increased productivity/staff motivation/higher profits caused by employees working harder / job satisfaction. 	3@5(2+3) Example of benefit to each stakeholder required

Employee involvement in decision making results in less industrial relations problems for the employer

Allowing a representative of the workforce on a board of directors or allowing employees an input into decision making

- Employee benefits from gaining a greater understanding of employers viewpoints and are more likely to accept and embrace workplace change.
- Employer loses less days due to industrial relations conflict/strike. They may also acquire new ideas from the employees which they had not considered.

Delegation of responsibility to employees, leads to a more positive workforce and increased productivity for the employer.

Union Recognition

- Employees benefits from the knowledge that their rights have been accepted in the workplace. This leads to a good industrial relations climate.
- Employer benefits from having an efficient mechanism for preventing/solving disputes.

Safe and healthy work environment

The employer provides a better and healthy working environment, meeting the legal and moral requirements and the employee feels safe, leading to a productive environment.

- **Investor and Manager**

The financial resources provided by investors are not wasted but are used productively by management to generate a fair return on investment for the investor.

Transparent Financial Information:

All financial information provided by the manager to investor is accurate and up to date. The manager uses the investment appropriately.

- Investor will benefit from seeing that their investment is safe.
- Manager will find it easier to acquire the necessary finance to fund new projects.

Reasonable remuneration is sought by senior management:
If senior management avoid seeking excessive payments investors may be more willing to invest as fair return on investment can be received.

- **Producer and Consumer**

Brand Loyalty:

Where the consumer repeatedly purchases the good

- Producer maintains the quality of the product
- Consumer benefits from certainty in the quality that they purchase, leading to repeat purchase and brand loyalty.

Agreed terms of sale (fair price, profit margin)

- Producer – provides a quality product at a reasonable price.
- Consumer – pays a reasonable price for the product based on its quality/value for money.

The producer has an open and fair complaints procedure and consumer complaints are dealt with in a fair manner.

Negotiation

- Both parties bargain with each other/a **process of bargaining**
- Seek to discover common ground and reach agreement to settle a matter of mutual concern
- A **compromise** is reached that both parties find acceptable.

Conciliation

- The third party attempts to get both sides of the dispute to talk / separately and jointly.
- The third party may offer a solution to the problem.
- The parties involved decide on the solution themselves /**not legally binding.**

Arbitration

- The third party listens to both sides and **makes a decision** /judgement on the solution.
- Both parties agree in advance to accept the solution/to abide by the decisions made.

Evaluation required

3@6(3+3)

2m

(C) (i) Name the act which protects consumers who purchased the Samsung Galaxy Note 7.

Question			Possible Responses	Max Mark
1	(C)	(i)	The Sale of Goods and Supply of Services Act 1980.	2 marks

(C) (ii) Outline **three** provisions of the act regarding a consumer's statutory (legal) rights in relation to the Samsung Galaxy Note 7.

Question			Possible Responses	Max Mark
1	(C)	(ii)	<p>Goods should be of merchantable quality Goods should be of reasonable standard/quality taking into account what they are supposed to do, their durability and their price. The mobile phone is a high price commodity, therefore should be of a high standard.</p> <p>Goods must be fit for the purpose intended This means that the goods must be able to do what they are supposed to do and what they were designed for (i.e. fit for the particular purpose for which the buyer intends to use them).</p> <p>Goods sold must be as described by the sales person If phone is purchased from a demonstration of the salesperson, the actual phone purchased should correspond with the demonstration.</p> <p>Redress If the complaint is valid the consumer is entitled to one of the three R's – refund, replacement or repair. If a consumer purchases a faulty phone and complains promptly then s/he is entitled to a full cash refund or replacement. The form of redress is dependent on how serious the fault is, the time it occurred and how soon after the purchase the complaint was made.</p> <p>Retailer is legally responsible under the act The consumer's legal right is against the retailer under the Act rather than the manufacturer.</p> <p>Guarantees The guarantee is only an additional right whereby the consumer can have the product fixed under the manufacturer's guarantee.</p>	3@6(3+3) Merchantable Quality Compulsory point.

Question	Possible Responses	Max Marks
1. (A)	<p data-bbox="370 183 1228 250">(i) Outline two reasons for fair dismissal, as set out under the Unfair Dismissal Acts 1977/2007.</p> <p data-bbox="370 295 1228 385">Incompetence on the part of the employee. The employee lacks the ability to carry out required duties (poor work performance; failure to meet set targets).</p> <p data-bbox="370 430 1228 564">Qualifications (misrepresentation by the employee). Lack of formal technical or professional qualifications as appropriate for the work the employee was employed to do/ misleading employer in relation to qualifications.</p> <p data-bbox="370 598 1228 687">Misconduct by the employee. Improper /unacceptable behaviour by the employee e.g. theft, substance abuse, violence at work.</p> <p data-bbox="370 732 1228 799">Redundancy. Due to closure, competition, decline in demand, cutbacks (fair procedures applied).</p> <p data-bbox="370 833 1228 900">Incapability refers to employee's attendance i.e. persistent lateness, absenteeism, or extended sick leave etc.</p> <p data-bbox="370 934 1228 1001">Legal Reasons. If continuation of the job was to break the law in some way e.g. if an employee's work visa expired etc.</p> <p data-bbox="370 1034 1228 1102">(ii) Explain the term 'constructive dismissal', providing an example to support your answer.</p> <p data-bbox="370 1146 1228 1281">Constructive dismissal refers to a situation where an employer makes it so difficult for an employee/ the employee feels they have no other option but to resign their position/, with or without notice.</p> <p data-bbox="370 1348 1228 1460"><i>E.g. An employee is constantly being harassed by his manager, who blames the employee for all problems in the business. The employee feels she has no option but to resign her position.</i></p> <p data-bbox="370 1494 1228 1574"><i>A change in functions of your job could give rise to a successful constructive dismissal case.</i></p>	<p data-bbox="1235 183 1532 250">20 marks (12m+8m)</p>

<p>(B)</p>	<p>Outline three other methods for terminating a legal contract.</p> <p>Frustration – an unforeseen event makes it impossible to complete the contract. <i>Concert is cancelled as singer is taken ill and unable to perform/death or bankruptcy of one of the parties to the contract.</i></p> <p>Breach – one party in the contract fails to fulfil his/her contractual obligation. The party is in breach of an essential condition of a contract. The other party may have the right of action in the courts and may sue for damages. <i>Professional footballer does not turn up for training session and has thereby breached his contract with the club.</i></p> <p>Agreement – both parties agree to end the contract whether or not the purpose of the contract has been achieved. <i>Employee hired for 9 month contract but completes project in 6 months. Both employer and employee agree to end the contract.</i></p> <p>A contract of employment may be ended by agreement if it includes a clause stating the contract can be terminated if one month’s notice is given.</p>	<p>20 marks</p>
<p>(C)</p>	<p>Evaluate the functions of the NCA (CCPC) with regard to protecting the interests of consumers.</p> <p>To provide information to consumers on their rights in relation to the purchase of goods and services – leaflets, website, telephone line.</p> <p>To enforce the relevant consumer law and encourage compliance, e.g. on-the-spot penalties and prohibition orders.</p> <p>To investigate suspected offences under any of the relevant laws, e.g. the NCA has the power to enter premises to gather evidence, with the support of the Gardaí if necessary The trader has 14 days in which to appeal the notice. If the trader fails to comply, the NCA may take criminal proceedings.</p> <p>To advise policy makers (Government) in relation to consumer protection and competition matters.</p> <p>To prohibit false pricing, e.g. goods advertised as being reduced in a sale must have been on sale at the higher price for twenty eight consecutive days sometime in the last three months. The NCA can serve a compliance notice on a trader whom it considers to have engaged in a prohibited activity.</p>	<p>20 marks</p>

Publication of a **Consumer Protection List**; a list of traders convicted of criminal offences, subject to court orders, bound by an undertaking, served with a compliance notice, or subject to a fixed payment notice.

To refer cases to the **Director of Public Prosecutions** where appropriate.

The National Consumer Agency may also apply to the **court for an order that requires a business to pay compensation** for any loss or damage to the consumer resulting from an offence.

Evaluation*****

Could refer to the Volkswagen emissions scandal in answer etc.

CCPC is a statutory body since October 2014

Investigates and challenges practices which are damaging to the consumer and/or the wider economy.

Provides information to consumers to help make informed decisions.

Promotes compliance with new regulatory regime.

Can take **enforcement actions** against trading companies in breach of the consumer protection legislation.

Advises policy makers (Government) in relation to consumer protection and competition matters.

Examines mergers and acquisitions to ensure there is not a substantial lessening of competition in Ireland which could impact on prices/services provided to consumers.

Responsibility for **market surveillance in relation to safety of products** covered by various EU Directives.

Brings anti-competitive behaviour and practices that are harmful to consumers to an end (via court actions where necessary).

www.consumerhelp.ie “about us” for additional points.

Evaluation*****

1	C	<p>Outline a consumer's legal rights under the terms of the <i>Sale of Goods and Supply of Services Act 1980</i> with reference to any three of the following:</p> <ul style="list-style-type: none"> (i) Merchantable Quality (ii) Guarantees (iii) Signs limiting consumer rights (iv) Unsolicited Goods <p>i Merchantable Quality The consumer is entitled to goods which are of merchantable quality – they should be of reasonable standard/quality taking into account what they are supposed to do, their durability and the price paid. A €50 pen versus a €1 pen. If the good is not of merchantable quality, the consumer could seek a refund, replacement, or repair depending on the type of fault and the time frame.</p> <p>ii Guarantees Guarantees are seen as additional protection given to the consumer and they cannot limit the consumer's rights under consumer law. The guarantee must clearly show what goods are covered, the time frame involved and the procedure for making claims. The consumer can choose to have the goods fixed by the manufacturer or they can insist that the retailer deals with the complaint. The contract is between the seller and the buyer.</p> <p>iii Signs limiting consumer rights Consumers' rights under the act cannot be taken away or limited by signs such as 'Credit Notes Only', 'No Cash Refunds', 'No exchange' etc. These signs are illegal and do not affect your statutory consumer rights. A credit note is not a refund as it restricts you to shopping in that shop. It is an offence for the retailer to display signs that give the consumer the impression that they have no legal rights.</p> <p>iv Unsolicited Goods These are goods that are sent to someone without having received an order. The consumer has the right to keep the goods without payment after thirty days if the consumer has sent written notice to the sender and informed him where they can be collected. S/he has the right to keep the goods after six months if the sender has not collected them and the consumer has not prevented the firm from collecting them.</p>	20
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Goods

Goods should be of merchantable quality – they should be of reasonable standard/quality taking into account what they are supposed to do, their durability and their price.

Goods must be fit for the purpose intended.

This means that the goods must be able to do what they are meant to do and what they were designed for (i.e. **fit for the particular purpose for which the buyer intends to use them**). For example, a waterproof jacket and leggings should keep the rain out. A combined fridge/freezer must be capable of freezing food.

Goods sold must be as described by the sales person, catalogue/package or sample.

For example if a consumer orders blue floral wallpaper from a catalogue then it can't be gold plain wallpaper when delivered.

Services

Services must be provided with due care and attention - a car left at a garage for a full service but the garage failed to change the oil.

A service provider must have the necessary competence and skills set. In addition, any materials used in the delivery of the service must be of merchantable quality.

Other Provisions

Unsolicited Goods/Inertia Selling.

It is illegal for a supplier to demand payment for unsolicited goods. These are goods that are sent to someone without having received an order. If a company sends you something you didn't order and does not provide for return post, it cannot invoice you for the product e.g. Book Club. This demand is an illegal act and the consumer has specific rights. The right to keep the goods without payment after thirty days if the consumer has sent written notice to the sender and informed him where they can be collected.

Consumers' rights under the act cannot be taken away or limited by signs such as 'Credit Notes Only', 'No Cash Refunds', 'No exchange' etc. These signs do not affect your statutory consumer rights. A credit note is not a refund as it restricts you to shopping in that shop.

Guarantees are seen as something extra (additional protection) that is given to the consumer and they cannot limit the consumer's rights under consumer law. The guarantee must clearly show what goods are covered, the time frame involved and the procedure for making claims.

Other points could include: Ownership and quiet possession/Retailer responsibility.

(ii) Illustrate **two** forms of redress available to consumers for breach of the Act.

The form of redress is dependent on **how serious the fault is**, the time it occurred **and how soon after the purchase the complaint was made**. If the complaint is valid the consumer is entitled to one of the three R's – refund, replacement and repair.

If a consumer purchases a **faulty good and complains promptly** then s/he is entitled to a full cash refund or replacement. For example if a consumer purchases a microwave oven and the minute timer doesn't work (i.e. not of merchantable quality) then s/he is entitled to a full refund of money paid. A replacement may also be provided, e.g. a new model of the same or similar quality given in its place.

When the consumer has used the product, when there is a **delay between the purchase date and the actual complaint, or when the fault is of a minor nature** then the consumer may only be entitled to partial refund or repair.

The consumer's rights lessen, the longer s/he puts off making the complaint.

(30 marks)

(i) **Small Claims Court:** www.courts.ie

Deals with consumer complaints relating to goods or services purchased, for private use from somebody selling them in the course of business. Maximum damages are €2,000.

(Since January 11, 2010 the Small Claims Court Service is available to businesses pursuing claims against other businesses).

Deals with consumer claims such as faulty goods, bad workmanship and minor damage to privately owned property.

- Both sides get to make their case and are encouraged to reach an agreed settlement.
- Decision made by the registrar of the court is not legally binding but is usually accepted.
- It is possible to pursue small claims through this service against product and service providers in any EU state, except Denmark.
- Appeals can be made through the District Court and heard before a judge.

Evaluation

- It is a fast/informal and easy way for consumers to resolve disputes.
- Inexpensive method of solving disputes. Non-refundable fee of €15 payable to the district court when claim lodged /No solicitors are required.
- The process can be carried out on-line. In 2008, almost half of the 4,145 claims processed were made online.
- You will get an unbiased and fair judgement.
- In 2008, the last year for which information is available, the Small Claims Court handled 4,145 complaints, up almost a quarter on the previous year. Only 26% of the claims made were actually referred to court.

(ii) The Ombudsman service

The Office of the ombudsman for Public Services: www.ombudsman.ie

- The Office of the Ombudsman investigates complaints about the activities of Government Departments, the Health Service Executive, local authorities and An Post.
- The Office of the Ombudsman cannot investigate complaints concerning The President, The Dail, Defence Forces, Garda Siochana, Judiciary, or Prison Service.
- The Office of the ombudsman is a last resort. The Ombudsman only investigates complaints, after the person has tried to solve the problem with the public body involved/ all other avenues for solving the issue have been exhausted.
- The Ombudsman is **independent of the Government, impartial** and provides a **free service**.
- Complaints have to be made within one year. The Ombudsman, after a fair, thorough review of a complaint, decides if it is justified and if it is, makes recommendations to the public body in order to resolve the problem.
- When the Ombudsman investigates a complaint s/he can either find in favour of the person who has complained or decide that the public body complained about has in fact acted correctly. If the Ombudsman finds in favour of the person who has complained s/he can help provide a remedy for what has gone wrong. For instance s/he can ask that an apology be made, or a grant or other benefit be paid, which had been refused previously. Recommendations of the Ombudsman are not legally binding on the parties involved with the complaint

Evaluation

Since 1984 **The Office of the Ombudsman** has helped over 70,000 people with valid complaints and advised and guided many others. The Office dealt with up to 10,000 queries from the public in 2009 and dealt with 2,800 complaints etc.

(B) (i) Sale of Goods and Supply of Services Act 1980.

Retailers in breach (Illustrate):

Goods

- Merchantable Quality
- Fit for the Purpose
- Correspond to the Description
- Correspond to the sample
- Ownership and Quiet Possession

Services

All services are provided on certain implied terms as follows:

- Supplier has the necessary skill to provide the service;
- Service provided with due skill and diligence and any materials used sound and fit for the purpose;
- Goods supplied as part of the service will be of merchantable quality.

Other provisions include:

- Guarantees
- Renting or Buying
- Motor Vehicles
- Spare Parts
- Unsolicited goods (Inertia Selling)

Candidates are required to illustrate the circumstances where retailers of goods/services would be in breach of the Act, in relation to any of the above provisions.

(B) (ii) Remedies for breaches of the Act

The remedy will depend on the seriousness of the fault, when the fault happened and how soon after purchase the consumer made the complaint.

- A full refund: If goods are not of merchantable quality/have major fault from the very beginning and the consumer acts within a reasonable time of the sale it is likely that the goods can be rejected by the buyer and a full refund will be provided.
- A partial refund, repair or replacement if the consumer has used the product/delayed in acting/there is an implied acceptance of the product. Any remedy must be completed without significant inconvenience to the consumer.

(B) Sale of Goods and Supply of Services Act 1980

Provisions (describe):

Goods

- Merchantable Quality
- Fit for the Purpose
- Correspond to the description
- Correspond to the sample
- Right to ownership and quiet possession.

Services

- Supplier has the necessary skill to provide the service
- Any materials used will be sound and fit for the purpose
- Goods supplied as part of the service will be of merchantable quality.

Other provisions include:

- Guarantees
- Renting or Buying
- Motor Vehicles
- Spare Parts
- Unsolicited goods (Inertia Selling)
- Cooling-off Periods
- The Retailer is Responsible
- Redress.

Evaluation of the Sale of Goods and Supply of Services Act 1980 effectiveness required

