

Marking Feedback Report

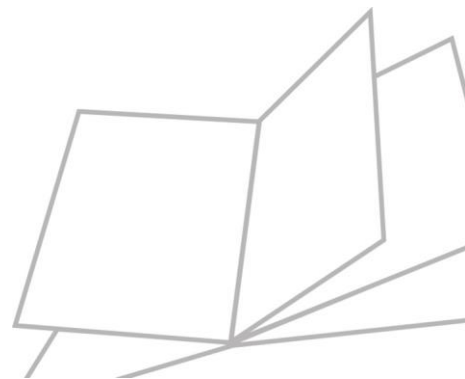
Order Number: OBE56654

Prepared for: Giles Hampton

Date: 17/01/2019



73 Chalton Street, London NW1 1HY
support@oxbridgeessays.com



How to read this report



Below is a full and detailed report, prepared for you by our in-house marking team.

The most detailed analysis is broken down into the following sections:

- [Structure](#)
- [Argument / Critical thinking](#)
- [Use of sources](#)
- [Knowledge and understanding](#)
- [Style and presentation](#)

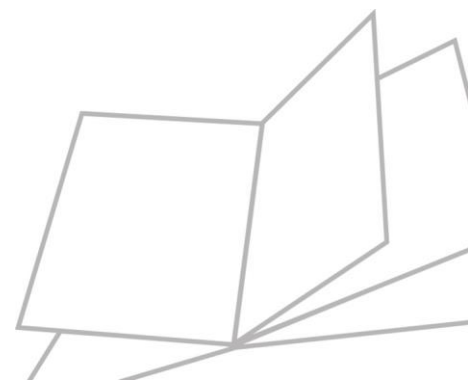
For each of the above sections, we have graded the project with a rating out of 5, with 1 being 'very poor' and 5 being 'excellent'. Below this, you'll also find individual ratings for your use of independent thinking, writing style/readability, and creativity/originality.

A summary and overall score is also provided, and a broader overview of the whole project can be gained via the following sections:

- [Strengths of project](#)
- [Weaknesses of project](#)
- [Specific changes to improve your project](#)

This project has been marked to UK university standards by an expert in your subject area. The grade bracket given is indicative based on the information we have. However, as marking is subjective the actual grade you get from your university may differ.

If you have any questions regarding your report you can contact your Academic Consultant directly, or email us: support@oxbridgeessays.com



Your report

56-60

Assignment details

Order ID

OBE56654

Level of study

LLM

Document type

Report

Words

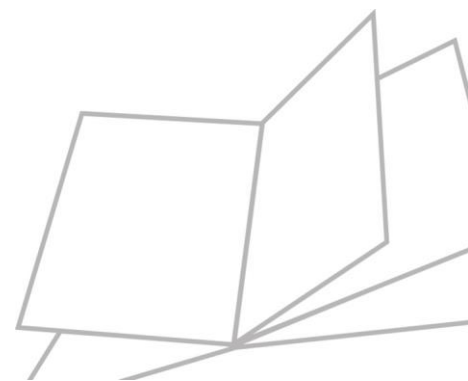
3000

Summary

Overall this is a good essay which considers most of the points required by the question and focuses well on exclusion clauses and the reforms which could be made to the Law to improve the position of small businesses. It could be more analytical in places incorporating this with setting out the Law accurately. You could strengthen your argument overall.

Strengths of project

Excellent points about the way in which small businesses may be considered to be more akin to a consumer. You also make excellent points about how the UCTA 1977 terms are procedural rather than substantive and how this may be problematic for small businesses. Excellent point about the problems with defining small businesses under different statutory procedures. You also undertake a very good analysis of the concept of reasonableness contained in UCTA as well. You come to a firm conclusion about how to reform the law in extending the CRA 2015 which is excellent. In general, your essay is clearly and well expressed.

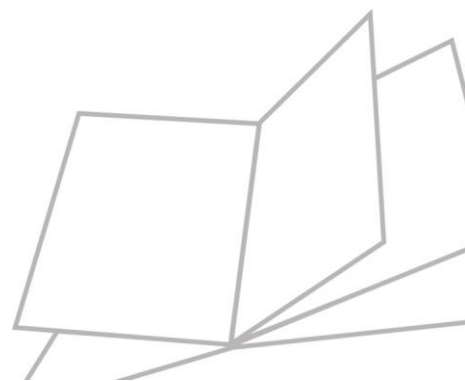


Weaknesses of project

Consider further what the arguments are as to freedom of contract or not. You could enhance this by deepening your analysis here and perhaps bringing in some specific examples. You could bring in authority more effectively in the body of the essay and be more consistently analytical in your approach to the question. You may also more effectively set out the comparison with other jurisdictions and say how there may or may not be more beneficial. The essay would benefit from more rigorous consideration of sources and in particular to think of summarising these more effectively and quoting from primary sources such as case law in particular.

Structure – ★★★★★☆

In general, the essay is well structured and readable. You guide the reader through the essay with clear headings, and your paragraphs are well formulated and cogent. You might consider how the structure of the essay could support your argument more effectively; in particular, think about how the headings could be more subject specific.



Argument / Critical thinking – ★★★★★

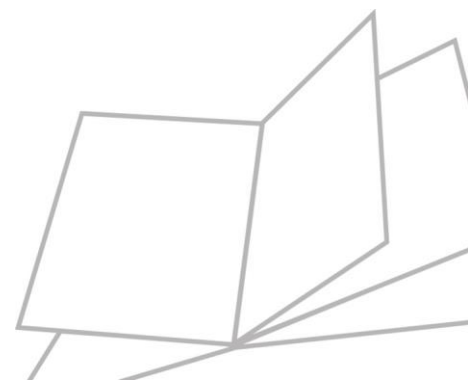
You set the project in the wider context of business in the United Kingdom which is very good. You could present a stronger argument in respect to the question posed and make this more consistently. It is clear that you favour small businesses having further protection similar to/and or the same as those currently given to consumers, in doing so you need to critically engage with the arguments surrounding the special protection of consumers, and also the impact this would have on the doctrine of "laissez-faire" contractual principles. I think you could strengthen your argument on this point as well - is it still the case that we have such a doctrine in English Law and how has it altered - linking this clearly to the question posed. You might also consider this point in light of the arguments about the importance of small business to the United Kingdom economy which is the point you make in the introduction from the Consultation exercise.

You might explain further the reasoning behind the view that it lowers the efficiency of the market - why, in what ways? This is also part of considering the pros and cons between the different businesses, why do small businesses warrant better protection, should they be trading if they are inefficient and cannot compete? I just think you could make this argument more compelling by considering some of the rationale more consistently throughout the essay. You go on to make a good point in respect of commercial certainty which is good.

Use of sources – ★★★★★

Think about bringing in the relevant legislation in the first paragraph of the essay which would set the context for what you are discussing throughout better.

You bring the case law into the essay early relating to freedom of contract - think about quoting from the judgment, however, as this would significantly enhance your point (Photo Production). Try not to rely on casebooks and textbooks at this level as authority for propositions, unless they are effectively practitioner texts. In the section which compares other jurisdictions, you might bring in the law in those countries more effectively and cite some of the statutory provisions. You might also think about comparing and contracting these more effectively with the position in the United Kingdom,



Knowledge and understanding – ★★★★★☆

Can you account for the differences which you outline between the way in which the law treats consumers and business/commercial enterprises? You might think about developing your argument here and set out what the reasoning is and how you intend to tackle this issue. I think you could set this context more effectively for your argument in the essay as a whole, particularly as you are asked to consider points as to how the Law could be reformed in the question itself. You have looked at the Government's Consultation paper on whether a small business is sufficiently protected which you cite in your first footnote. However, you might use this more effectively in setting out the case for and against the current state of the law in this area. You might also bring out a bit more the principle of equality of bargaining power and make this an issue in respect of whether small businesses should be given similar protection as consumers. What are the arguments for and against this in principle in any case?

Style and presentation – ★★★★★☆

The project is well presented, the text spaced appropriately, headings adopted for the sections of the essay and the text justified.
Why are your footnotes a different font to the text?

Writing style/readability

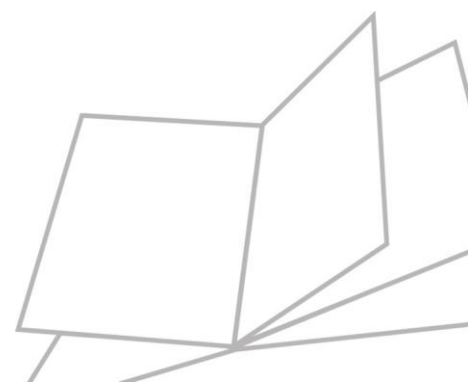
★★★★☆

Independent thinking

★★★★☆

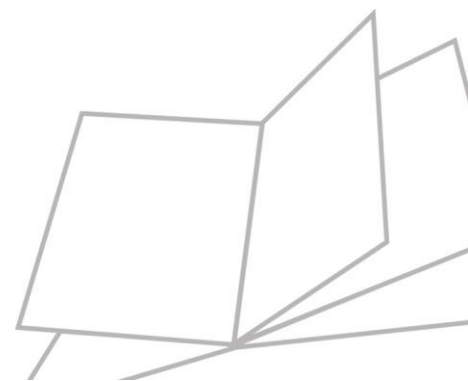
Creativity / Originality

★★★★☆



Specific changes to improve the project

- Critically engage more with the arguments surrounding the special protection of consumers, and also the impact this would have on the doctrine of "laissez-faire" contractual principles.
- Consider if it is still the case that we have a doctrine on the special protection of consumers in English Law (or how has it altered), and link this clearly to the title question posed.
- Explain further the reasoning behind the view that the Consultation lowers the efficiency of the market - why, in what ways? This argument should be made more compelling by considering some of the rationales more consistently throughout the essay.
- Consider further what the arguments are as to freedom of contract or not, and enhance by deepening your analysis here and perhaps bringing in some specific examples.
- You need to more effectively set out the comparison with other jurisdictions and say how there may or may not be more beneficial.
- You might consider how the structure of the essay could support your argument more effectively; in particular, think about how the headings could be more subject specific.
- The sources need to be more closely considered, and summarised more effectively - you can also quote more from primary sources such as case law in particular.
- Bring in the relevant legislation in the first paragraph of the essay to better set the context for what you are discussing.
- You bring the case law into the essay early Quote from the judgment relating to freedom of contract would significantly enhance your point (Photo Production).
- Use casebooks and textbooks less for propositions, unless they are effectively practitioner texts.



- Bring in the law in other countries more effectively and cite some of the statutory provisions in the section which compares other jurisdictions. Compare and contrast these more with the position in the United Kingdom.
- There is a lot of narrative setting out the law in the section headed "Operation of the Unfair Contract Terms Act". This is good and accurate, but you could perhaps restructure it slightly to incorporate more analysis and consider how the specific points you are making could advance your overall argument. The marker will know the Law, and you want to use your knowledge as effectively as possible to support your argument.
- Explain further in the conclusion what you mean about the inefficient allocation of risk. It does not seem very clear as it stands.
- At footnote 35 have you researched any cases which might demonstrate this point? Perhaps have a brief look back at the reference in the text you cite to see if there is something which can demonstrate this.
- Think about word choices - such as "crucial differences" - what do you mean by this? And further "bright lines" which you refer to. Similarly, on p.4 think about changing lower to weaker for bargaining power of the parties.
- On p.7 second paragraph why don't you put the case law you are citing in the main body of the essay and make your points there?
- P.10 you need to change the second sentence to "it makes sense". And you need to change the last sentence to put a space, so it reads "this lowers".
- P.10 you need to put a space in here too, so it reads "protection. Making". Is there any case law to support the argument that English common law rejects ideas of "good faith" and substantive fairness as this would make your point here more authoritative?
- P.5 amend the punctuation at the end of the second paragraph of p.5.
- Put a hanging indent on to the books in your bibliography as this will make it clearer.
- Footnotes should be in the same font as the main body text.

