
Law & Ethics

Northern Ireland

1st Year Examination

August 2010

Paper, Solutions & Examiner's Report



NOTES TO USERS ABOUT THESE SOLUTIONS

The solutions in this document are published by Accounting Technicians Ireland. They are intended to provide guidance to students and their teachers regarding possible answers to questions in our examinations.

Although they are published by us, we do not necessarily endorse these solutions or agree with the views expressed by their authors.

There are often many possible approaches to the solution of questions in professional examinations. It should not be assumed that the approach adopted in these solutions is the ideal or the one preferred by us. Alternative answers will be marked on their own merits.

This publication is intended to serve as an educational aid. For this reason, the published solutions will often be significantly longer than would be expected of a candidate in an examination. This will be particularly the case where discursive answers are involved.

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Accounting Technicians Ireland
1st Year Examination: Autumn Paper 2010
Paper: LAW & ETHICS (NI)

FRIDAY 20th AUGUST 2010 - 9.30 a.m. to 12.30 p.m.

INSTRUCTIONS TO CANDIDATES

For candidates answering in accordance with the law and practice of Northern Ireland.

Section A is a compulsory question and must be attempted.

Section B answer ANY FOUR of the FIVE questions.

Section C answer ANY FOUR of the FIVE questions.

If more than the required questions are answered in Section B and Section C, then only the correct number of questions, in the order filed, will be corrected.

Candidates should allocate their time carefully.

Marks will be awarded for specific reference to sections of the Acts/Orders and decided cases. Candidates are expected to answer the questions in their own words in order to demonstrate their understanding of the points at issue. The mere transcription of sections of the Acts/Orders, or the citing of references therein, by itself, will not be regarded by the Examiner as a sufficient answer.

Answers should be illustrated with examples, where appropriate. Cite any relevant authorities and/or statutory provisions to support your answers.

Question 1 begins on Page 2 overleaf.

SECTION A**Compulsory Question**

Cite any relevant authorities and/or statutory provisions to support your answers

QUESTION 1

(a) Discuss any FIVE provisions of the Combined Code on Corporate Governance. **10 Marks**

(b) List any FOUR other sources of corporate governance in Northern Ireland. **2 Marks**

(c) Define the offence of wrongful trading and outline the sanctions that may be imposed where the offence is proven.

8 Marks

Total 20 Marks

SECTION B

Answer ANY FOUR of the FIVE questions in this Section

Cite any relevant authorities and/or statutory provisions to support your answers

QUESTION 2

Jasper and Rosalie have recently been made redundant from their positions as financial advisors with the People's Bank of Belfast. They are considering setting up a business to provide financial consultancy services and are contemplating establishing a partnership for this purpose. Jasper and Rosalie know nothing about partnership law and in this regard they seek your advice on the following matters:

(a) Outline the membership requirements to operate as a partnership in Northern Ireland. **1 Mark**

(b) Explain the THREE classifications of partners that may exist in a partnership. **4.5 Marks**

(c) Discuss any THREE rights of a partner in a partnership. **4.5 Marks**

Total 10 Marks

QUESTION 3

Laura has just inherited £100,000 from the estate of her late aunt Mildred. She has been advised to invest this money in company debentures. Laura knows nothing about debentures and seeks your advice on the following matters:

(a) Define a debenture.

1.5 Marks

(b) Explain the THREE main types of debentures that can be issued by a company.

6 Marks

(c) List the priority of payment of company debts upon liquidation.

2.5 Marks

Total 10 Marks

QUESTION 4

In the context of company directors:

(a) Define what is meant by a 'Shadow Director'.

3 Marks

(b) State the grounds upon which a 'Disqualification Order' can be made against a Director.

7 Marks

Total 10 Marks

QUESTION 5

(a) Define a resolution and discuss the main differences between ordinary resolutions and special resolutions at company meetings.

8 Marks

(b) Outline the role of the chairperson at company meetings.

2 Marks

Total 10 Marks

QUESTION 6

Westward Recordings Ltd has been in financial difficulty for the last year and as a consequence of these financial problems the company has gone into Administration.

(a) Define what is meant by Administration and state the various persons who can apply to the court to appoint an Administrator.

4 Marks

(b) Discuss the role of an Administrator.

4 Marks

(c) Outline any TWO methods by which an Administrator may be removed from office.

2 Marks

Total 10 Marks

SECTION C

Answer ANY FOUR of the FIVE questions in this Section

Cite any relevant authorities and/or statutory provisions to support your answers

QUESTION 7

(a) Discuss the following **civil** courts:

i. County Court

2 Marks

ii. High Court

2.5 Marks

(b) List the THREE main sources of law in Northern Ireland.

1.5 Marks

(c) Discuss the Parliamentary process in which a Bill becomes an Act of Parliament in the United Kingdom.

4 Marks

Total 10 Marks

QUESTION 8

In January 2010, Alison booked a place at a conference that was taking place in Craigavon, County Armagh. As this conference was taking place over three days Alison booked herself into the Craigavon County Hotel for the two nights. She made this booking over the phone, and reserved the room by credit card. When Alison arrived at the hotel her credit card was validated at reception and she was given a key to the room. Inside the door to her room was a notice, which read "*the hotel does not accept any responsibility for the loss, theft or damage of any items belonging to the guest*".

On the second day of her stay Alison returned to her hotel room to find that there had been a robbery and that her laptop computer, mobile phone and expensive winter coat had been stolen. Alison contacted the hotel's management to report the robbery and seek compensation for her losses but the hotel's management has informed her that they are not liable for her losses as a consequence of the notice/exemption clause in the hotel bedroom.

(a) Define an exemption clause.

2 Marks

(b) Explain any TWO methods by which an exemption clause can be incorporated into a contract.

6 Marks

(c) Assess whether the Craigavon County Hotel can rely on this exemption clause to avoid liability for Alison's claim.

2 Marks

Total 10 Marks

QUESTION 9

Simon has been employed as a recruitment consultant with Richmond Recruitment Services for the past two years. Last week there was an incident in the office when a candidate of Simon's who had interviewed for a financial accounting job found out that he was unsuccessful at the interview and then proceeded to verbally abuse Simon, shouting that if Simon had prepared him better that he would have gotten the job. When Simon tried to calm the candidate down the candidate threw a punch, which accidentally hit another worker, knocking her over. Simon then threw himself on top of the candidate to restrain him, and the police were called to the scene.

Yesterday Simon was called to a meeting with his employer and was informed that the candidate was suing Richmond Recruitment Services for assault, and that in light of this action that his employer had no option but to terminate Simon's contract with immediate effect. Simon is furious at his employer's actions and is considering suing Richmond Recruitment Services for unfair dismissal.

(a) What criteria must an employee satisfy in order to be eligible to make a claim for unfair dismissal?

2 Marks

(b) State FOUR reasons that are automatically considered unfair under the Employment Rights (Northern Ireland) Order 1996.

4 Marks

(c) Outline the test applied by the Tribunal in assessing whether or not an employee has been unfairly dismissed.

2 Marks

(d) Assuming that Simon is successful in his action for unfair dismissal, outline the main remedies that may be available to him.

2 Marks

Total 10 Marks

QUESTION 10

Gavan is employed as a stock room manager with Discount Garden City. Last January, Gavan was supervising the unloading of a cargo of garden furniture when a pallet of flower pots fell from an overhead shelf on top of him. As a consequence of the accident Gavan broke his leg in three different places and required surgery to install a number of pins in his knee and leg to fuse the bones back together. Gavan has been unable to work since the accident, and still has limited movement in his leg.

(a) In the context of the law of negligence, discuss the concept of remoteness of damages and assess whether the company are obliged to compensate Gavan for his injuries.

7.5 Marks

(b) List the FIVE categories of damages that can be awarded to a plaintiff in a claim for negligence.

2.5 Marks

Total 10 Marks

QUESTION 11

In the context of the law of agency discuss the following:

(a) Any FOUR duties of an agent.

6 Marks

(b) The termination of a contract of agency by operation of the law.

4 Marks

Total 10 Marks



1st Year Examination: August 2010

Law & Ethics (NI)

Suggested Solutions

Students please note: These are suggested solutions only; alternative answers may also be deemed to be correct and will be marked on their own merits.

Solution to Question 1

- A. Discuss any FIVE provisions of the Combined Code on Corporate Governance. **(10 marks)**
- B. List any FOUR other sources of corporate governance in Northern Ireland. **(2 marks)**
- C. Define the offence of wrongful trading and outline the sanctions that may be imposed where the offence is proven. **(8 marks)**

Total 20 Marks

- A. Combined Code on Corporate Governance: the Code requires that companies must have the following: (1) a strong, involved board of directors (no individual/small group can dominate board decision making), (2) a balance of executive and non-executive directors, including (two) independent non-executive directors (who in a committee decide the remuneration of the executive directors), (3) a clear division of responsibilities between the chairman (responsible for the working of the board/meetings) and chief executive (full operational control to carry out board policies), (4) the provision of timely, quality information from the board, (5) formal, transparent procedures for the appointment of new directors (maximum period of employment contract of 1 year), (6) balanced and understandable financial reporting; and (7) the maintenance of a sound system of internal controls and audit procedures **(Any 5 x 2 marks = 10 marks)**
- B. Sources of Corporate Governance: any four of the following: (1) company legislation – the Companies Acts 2006, (2) criminal law – The Proceeds of Crime Act 2002, (3) common law rules (cases defining duties of directors), (4) the company's own Memorandum/Articles of Association (regulating acceptable behavior /procedures etc), or (5) the Listing Rules, published by the London Stock Exchange **(4 x 0.5 marks = 2 marks)**
- Wrongful Trading: this offence arises where: (1) a company has gone into insolvent, (2) before commencement of the winding up of the company, that person knew or ought to have known that there was no reasonable prospect that the company would have avoided insolvent liquidation, (3) that person is a director (the offence can only be committed by a director (including shadow and *de jure* directors)) – two examples included in the legislation: (1) the director/s of the insolvent company knew or should have known that there was no reasonable prospect that the company could

have avoided going into insolvent liquidation, and (2) the directors did not take sufficient steps to minimise the potential loss to creditors **(5 marks)** – Sanctions: civil liability attaches in that a person may be held personally liable in the civil courts for the debts of the company arises from wrongful trading – the court may also make a disqualification order against them, disqualifying them from acting as a director, auditor, receiver, officer, liquidator or examiner, or being involved in the promotion, formation or management of a company for up to fifteen years or such other period as the court may direct **(3 marks)**

Solution to Question 2

Jasper and Rosalie have recently been made redundant from their positions as financial advisors with the People's Bank of Belfast. They are considering setting up a business to provide financial consultancy services and are contemplating establishing a partnership for this purpose. Jasper and Rosalie know nothing about partnership law and in this regard they seek your advice on the following matters:

- A. Outline the membership requirements to operate as a partnership in Northern Ireland. **(1 mark)**
- B. Explain the various classifications of partners that may exist in a partnership. **(4.5 marks)**
- C. Discuss any THREE rights of a partner in a partnership. **(4.5 marks)**
- Total 10 Marks**

- A. Membership requirements: 2-20 ordinary partnership – exception of maximum 50 partners re solicitors/accountants **(1 mark)**
- B. Classifications of Partners: (1) an active partner is a person who has invested money in the partnership and is fully involved in the day-to-day running of the firm – their duties are stated in the Partnership Agreement and governed by Partnership law – as such they have unlimited liability for partnership debts – (2) a silent/sleeping partner is a person who has invested money in the partnership – but is in no way involved in the day-to-day running of the firm – this partner has unlimited liability – (3) a limited liability partner is a person who has invested capital in the firm and is entitled to a share of the profits made, but who is not involved in the day to day running of the business – this partner also has his liability for any debts of the partnerships fixed at a certain amount by registering himself with Companies House as a limited liability partner **(3 x 1.5 marks = 4.5 marks)**
- C. Rights of the Partners: (1) to share equality in profits, losses and capital (unless otherwise agreed), (2) to receive interest on capital (by agreement) and 5% interest on sums advanced thereafter, (3) to indemnify the partners against any expenses incurred in the running of the firm, (4) to participate in the management of the firm, (5) to access the firm's books of account, (6) to prevent the admission of a new partner – the expulsion of an existing partner – or a change in the nature of the partnership business, (7) the right to be treated by the other partners in good faith and with mutual confidence **(any 3 x 1.5 marks = 4.5 marks)**

Solution to Question 3

Laura has just inherited £100,000 from the estate of her late aunt Mildred. She has been advised to invest this money in company debentures. Laura knows nothing about debentures and seeks your advice on the following matters:

A. Define a debenture.

(1.5 marks)

B. Explain the various categories of debentures that can be issued by a company.

(6 marks)

C. List the priority of payment of company debts upon liquidation.

(2.5 marks)

Total 10 Marks

- A. Debenture: this was defined in *Levy v Abercorris State & Slab Co. (1887)* as a document that creates a debt or acknowledges it – the debenture states the terms on which the company has borrowed money and is issued by the company to the lender – it will state the principal sum of money to be repaid and the sum of interest **(1.5 marks)**
- B. Types of Debentures: (1) Single Debenture – this document will consist of a single loan made between the company and the lender – the lender may be a bank providing a long term overdraft facility to the company **(2 marks)**, (2) Series of Debentures – this consists of a series of separate loans made on different dates by different lenders to the company – each of these loans comprises a part of an overall loan and each debenture in the series ranks equally in their right to security and repayment **(2 marks)**, and (3) Debenture Stocks – this loan is used by public companies only – where instead of a company creating a series of separate debentures as above, a company will create debenture stock – this stock creates a loan fund, which a number of lenders (the public) will invest money in on exactly the same terms and conditions as stated in the debenture document – the terms of the borrowing are set out in a single Trust Deed **(2 marks)**
- C. Priority of Payments on Liquidation: (1) the costs of liquidation (liquidators fees and expenses), (2) debentures secured by fixed charges (in order of creation & provided they are registered) , (3) preferential debts (occupational pension schemes and employees of companies), (4) debentures secured by floating charges (in order of creation & provided they are registered), (5) unsecured creditors, (6) members declared dividends, and (7) shareholders (first preference, then ordinary) **(2.5 marks)**

Solution to Question 4

In the context of company directors:

- A. Define what is meant by a 'Shadow Director'. **(3 marks)**
- B. State the grounds upon which a 'Disqualification Order' can be made against a Director. **(7 marks)**

Total 10 Marks

- A. Shadow director is defined as 'a person with whose directions or instructions the directors of a company are accustomed to act'- they do not take the title of director and remains in the background – but they exercise the same level of control as ordinary directors and are subject to company law legislation – in reality, they instruct and direct the board of directors as to how to act in relation to company matters and exercise control over majority or all of board of directors **(3 marks)**
- B. Disqualification Order: This is an Order brought against directors who can be banned from acting in the position of director and prevented from taking part in the promotion, formation, or management of any company, either directly or indirectly for a period of up to 15 years – the Articles of Association and the 2002 Regulations state that a director may be disqualified if he is: (1) involved in general misconduct in connection with companies – for example persistent failure to comply with company law legislation Secretary of State for Trade and Industry v Mctighe (1996) – the director was disqualified for 12 years for misappropriated funds of up to half a million and not cooperating with liquidators and receivers, (2) the person is unfit to be a director – the High Court will make a disqualification order against a director of a company that becomes insolvent and where his conduct makes him unfit to be a director – examples include failure to provide financial accounting systems, (3) a person becomes an un-discharged bankrupt – in this situation he cannot become a director again without the permission of the High Court, (4) they are involved in fraudulent behaviour – including fraudulent or wrongful trading – in addition the maximum duration on the length of time a director can be disqualified is fifteen years **(7 marks)**

Solution to Question 5

- A. Define a resolution and discuss the main differences between ordinary resolutions and special resolutions at company meetings. **(8 marks)**
- B. Outline the role of the chairman at company meetings. **(2 marks)**

Total 10 Marks

- A. Resolutions: a resolution is the formal means by which decisions are made at company meetings **(1 mark)** – the main differences between ordinary and special resolutions are: (1) how it is passed (ordinary requires a majority – whereas a special requires 75%), (2) notice to members (ordinary and special resolutions require 14 days notice except to remove a director/auditor, which requires special notice of 28 days), (3) matters to be voted on (ordinary: (a) consideration of the company's financial statements, (b) election or re-election of directors, (c) the appointment of an auditor, (d) the remuneration of auditors, and (e) the declaration of dividends – special: (a) change to the company's constitution (Articles of Association), (b) change of company name, (c) reduction of the share capital of the company, and (d) re-registering a company from private to public or vice versa), and (4) registrar (some ordinary do not need to be registered whereas all special must be delivered to the Registrar of Companies House within 15 days) **(7 marks)**

- B. Chairman: they are responsible for the meeting and ensuring that the meeting covers all the topics on the agenda – the chairman must maintain order during the meeting and has the power to dissolve or adjourn the meeting if it becomes disorderly **(2 marks)**

Solution to Question 6

Westward Recordings Ltd has been in financial difficulty for the last year and as a consequence of these financial problems the company has gone into Administration.

- A. Define what is meant by Administration and state the various persons who can apply to the court to appoint an administrator. **(4 marks)**
- B. Discuss the role of an Administrator. **(4 marks)**
- C. Outline any TWO methods by which an administrator may be removed from office. **(2 marks)**
- Total 10 Marks**

- A. Administration: this is an alternative process to liquidation for a company that is in financial difficulty – the purposes of administration are: (1) to enable the company to survive and carry on trading, and (2) to achieve a more advantageous result for the creditors than if the company went straight into liquidation – persons who can apply to the court include: (1) the company, (2) its directors, and (3) its creditors **(4 marks)**
- B. Role of an Administrator: (1) notify company of their appointment, (2) examine the statement of the company's affairs from company officers, (3) put forward proposals to the company in order for it to achieve the purposes of administration, and (4) call a meeting with the creditors within ten weeks of his appointment to discuss proposals for rescue **(4 marks)**
- C. Methods of removal: (1) period of office comes to an end, (2) administrator applies to court to terminate his appointment because administration has achieved its objectives or purposes of administration cannot be achieved, (3) a creditor can apply to the court to terminate the administration before the period has ended, or (4) the administrator is no longer qualified to hold office **(any 2x 1 mark = 2 marks)**

Solution to Question 7

A. Discuss the following **civil** courts:

i. County Court

(2) Marks

ii. High Court

(2.5) Marks

B. List the THREE main sources of law in Northern Ireland.

(1.5 marks)

C. Discuss the Parliamentary process in which a Bill becomes an Act of Parliament in the United Kingdom.

(4 marks)

Total 10 Marks

- A. County Court: County: largest civil court involved contract and tort disputes with a value less than £15,000. Also, deal with some family and licenses issues- can appeal decisions to High Court. High Court: divided into three sections, Family- deals with divorces and custody issues, Queen's Bench division is the largest division dealing with contract and tort disputes with a value over £15,000 and Chancery deals with equity matters such as land and trust and also deals with bankruptcy, winding up proceedings and partnership and company law matters. **(Total marks = 4.5 marks)**
- B. Sources of Northern Irish Law: (1) legislation (either primary or delegated), (2) case law (common law/equity), and (3) EU law (either through EU Regulations or Directives passed in accordance with the Treaties) **(3 x 0.5 marks = 1.5 marks)**
- C. An Act of Parliament: this starts life as a Bill and before it becomes an Act it goes through the following process: (1) First reading: the Bill is laid before the House of Commons, (2) Second reading: the Government sets out main objectives of Bill and opposition put forward their views – then debate begins. (3) Committee Stage: a selected committee of MP's consider the Bill, (4) Report stage: the committee report back, (5) Third reading: the House of Lords repeat the House of Commons process, and (6) Royal assent: the Monarch approves the Bill making it an Act of Parliament **(4 marks)**

Solution to Question 8

Alison is currently studying to take her second year exams with Accounting Technicians Ireland. In January 2010 she booked a place on a revision seminar for these exams. The seminar was taking place in Craigavon, County Armagh. As this seminar was taking place over three days Alison booked herself into the Craigavon County Hotel for the two nights. She made this booking over the phone, and reserved the room by credit card. When Alison arrived at the hotel her credit card was validated at reception and she was given a key to the room. Inside the door to her room was a notice, which read "*the hotel does not accept any responsibility for the loss, theft or damage of any items belonging to the guest*".

On the second day of her stay Alison returned to her hotel room to find that there had been a robbery and that her laptop computer, mobile phone and expensive winter coat had been stolen. Alison contacted the hotel's management to report the robbery and seek compensation for her losses but the hotel's management has informed her that they are not liable for her losses as a consequence of the notice/exemption clause in the hotel bedroom.

- A. Define an exemption clause. **(2 marks)**
- B. Explain any TWO methods by which an exemption clause can be incorporated into a contract. **(6 marks)**
- C. Assess whether the Craigavon County Hotel can rely on this exemption clause to avoid liability from Alison's claim. **(2 marks)**
- Total 10 Marks**

- A. Exemption Clause: this is a clause used by a party in a contract that attempts to exempt (exclusion clause) or restrict (limitation clause) their liability for losses arising from a breach of contract **(2 marks)**
- B. Incorporation of an Exemption Clause: (1) this may arise by signature: where the injured party has signed the contract containing an exemption clause – if the injured party signs without reading the contract, the clause will still be considered validly incorporated into the contract - L'estrage v Graucob (1934), (2) by reasonable notice: a party to a contract that contains an exemption clause must be given reasonable notice of the clause either before or at the time of entering the contract, not after – when determining whether reasonable notice was given the courts will have regard to all the circumstances and take into account factors, such as when the notice was given, what form the notice was given in and how serious the effect of the limitation or exemption has on the injured party - Chapelton v Barry Urban District Council (1940), Thornton v Shoe Lane Parking Ltd (1971) or (3) by a course of dealing: even if insufficient notice of the exemption clause has been given, the courts may still determine that the clause is validly incorporated if the parties have had previous dealings on a regular/consistent basis with each other – Spurling Ltd v Bradshaw (1956), Rambler Motors (1972) **(any 2 x 3 marks = 6 marks)**
- C. Validity of the Clause: it is unlikely that this clause will be deemed valid by the Court as it was only brought to Alison's attention after she entered into the contract – and as she is not a regular customer – it cannot be incorporated by a course of dealing **(2 marks)**

Solution to Question 9

Simon has been employed as a recruitment consultant with Richmond Recruitment Services for the past two years. Last week there was an incident in the office when a candidate of Simon's who had interviewed for a financial accounting job found out that he was unsuccessful at the interview and then proceeded to verbally abuse Simon, shouting that if Simon had prepared him better that he would have gotten the job. When Simon tried to calm the candidate down he threw a punch, which accidentally hit another worker, knocking her over. Simon then threw himself on top of the candidate to restrain him, and the police were called to the scene.

Yesterday Simon was called to a meeting with his employer and was informed that the candidate was suing Richmond Recruitment Services for assault, and that in light of this action that his employer had no option but to terminate Simon's contract with immediate effect. Simon is furious at his employer's actions and is considering suing Richmond Recruitment Services for unfair dismissal.

- A. What criteria must an employee satisfy in order to be eligible to make a claim for unfair dismissal? **(2 marks)**
- B. Discuss the nature of the duties imposed upon an employer and employee regarding compliance with workplace dispute procedures.

(4 marks)

C. Outline the test applied by the Tribunal in assessing whether or not an employee has been unfairly dismissed.

(2 marks)

D. Assuming that Simon is successful in his action for unfair dismissal, outline the main remedies that may be available to him.

(2 marks)**Total 10 Marks**

- A. Eligibility criteria for Unfair Dismissal: (1) the worker must be employed under a contract of service, (2) the worker must be employed for a continuous period of one year prior to the termination, (3) the worker cannot be an employee who is excluded under the Order from making a claim – for example employees who work outside of NI or employees of the crown **(2 marks)**
- B. Workplace Dispute Procedures: (1) the employer has a duty to follow disciplinary procedures and dismissal procedures and if they fail to do so, the employees claim for unfair dismissal is automatically granted and the compensation award is increased between 10-50% **(2 marks)**, (2) the employee is under an obligation to follow the grievance procedures and cannot present their claim to the tribunal unless they have complied with the procedures – if they do not fully cooperate their compensation award may be reduced by between 10-50% **(2 marks)**
- C. The court assesses the fairness or unfairness of the reason provided by the employer to terminate the contract of employment by applying the reasonableness test – this means that they will consider all the facts in each case and apply those facts in determining whether a reasonable employee would have terminated the contract for the reason provided **(2 marks)**
- D. Remedies: (1) reinstatement: where the employee is restored to the same position of employment with the same employer and treated as if they had not been dismissed and are restored to exactly the same job with the same rights and conditions, (2) re-engagement: when the employee is restored to employment with the employer but in a different job role – the job is not the same but is suitable for the employee and comparable to their previous position, or (3) compensation – this is made up of a basic award (maximum £10,500, and a compensation award – maximum £66,200 - sometimes the tribunal may make a special award may be given **(2 marks)**

Solution to Question 10

Gavan is employed as a stock room manager with Discount Garden City. Last January Gavan was supervising the unloading of a cargo of garden furniture when a pallet of flower pots fell from an overhead shelf on top of Gavan. As a consequence of the accident Gavan broke his leg in three different places and required surgery to install a number of pins in his knee and leg to fuse the bones back together. Gavan has been unable to work since the accident, and still has limited movement in his leg.

A. In the context of the law of negligence, discuss the concept of remoteness of damages and assess whether the company are obliged to compensate Gavan for his injuries.

(7.5 marks)

B. List the FIVE categories of damages that can be awarded to a plaintiff in a claim for negligence.

(2.5 marks)**Total 10 Marks**

- A. Remoteness of Damages: this is a device used by the Court to determine whether or not the level of damage caused by the breach could have been reasonably foreseen – if the courts determine that the level of damage caused by the breach was too remote and could not have been foreseen by a reasonable person, they will not hold the defendant liable – this means that although the defendant’s breach may cause the damage, the defendant will not be held accountable for all of the damage – this is because the damage resulting from the breach is so unexpected or ‘remote’ that the court considers it unfair to hold the defendant accountable for a level of damage he could not have foreseen – this test is known as the ‘reasonably foreseeable’ test and was developed in The Wagon Mound (1961) **(7.5 marks)**
- B. Categories of Damages: (1) special damages, (2) general damages, (3) exemplary damages, (4) nominal damages, and (5) aggravated damages **(5 x 0.5 marks = 2.5 marks)**

Solution to Question 11

In the context of the law of agency discuss the following:

A. Any FOUR duties of an agent.

(6 marks)

B. The termination of a contract of agency by operation of the law.

(4 marks)

Total 10 Marks

- A. Duties of an Agent: (1) Duty to act with due care and skill: the standard of duty required will depend on whether the agent holds himself out to have a skill or expertise in the area – an agent should apply a reasonable standard of care and if he holds himself out to have expertise then the agent must apply the appropriate standard that a reasonable person with that skill would do – Chariot Inns v Assicurazioni Generali SPA (1981), (2) Duty to obey instructions and duty not to exceed authority: an agent should carry out his instructions as laid out in the contract or as stated to him by the principal – the agent should not exceed his authority as he may be held liable under the contract, (3) Duty to avoid conflicts of interests and make full disclosure: an agent is under an obligation to make full disclosure and is not to make a personal gain from the arrangement unless the principal has knowledge – McPherson v Watt (1877) and Armstrong v Jackson (1917), (4) Duty not to make a secret profit: an agent is under a duty not to make a profit out of the transactions he carries out on behalf of his principal – the agent is entitled to keep any profits if the principal has knowledge of any profits being made – Sherrard v Barron (1923), (5) Duty not to delegate: an agency relationship is usually a personal relationship and the agent should not delegate his duties unless authorised to do so by the principal - John McCann & Co v Pow (1974), (6) Duty to Account: an agent is under a duty to keep proper accounts of all dealings and provide accounts for all monies received from transactions – the agent must be prepared to disclose his accounts to the principal upon request, (7) Duty to communicate and keep confidentiality: an agent should communicate all relevant information to the principal and keep all information confidential **(any 4 x 1.5 marks = 6 marks)**
- B. Termination of an Agency by operation of the law: this may arise (a) through the death, insanity, bankruptcy of the parties, (b) through the expiration of an agreed time, (c) by the doctrine of frustration – an unforeseen event which means that the agency agreement cannot be completed as agreed), or by (d) a change in the law affecting the contract of agency **(4 marks)**

1st Examination: Autumn 2010

Law & Ethics (NI)

Examiner's Report

General comments:

There was a very low pass rate in this examination and overall the standard of answers given by candidates was poor. Many candidates failed to attempt the required number of questions and struggled to answer the compulsory question. I noticed that a significant number of candidates would answer some questions on the paper and gain nearly full marks and yet gain few or no marks in other questions. This emphasized the fact that candidates are revising for the exam based on past paper questions rather than the syllabus. It was disappointing to see that many candidates who did not pass this exam did show ability and potential in some questions and could have passed this exam if they had simply revised a greater number of topics from the **manual** and not from past papers.

Also, many candidates who revised the sample answers provided in the pilot papers would recite these answers in the exam, despite the fact that the question asked was not that in the past exam/pilot papers. No marks can be awarded for a detailed and factually correct answer, if it does not in fact answer to any degree the question set. I urge candidates to always attempt all questions, but spend time trying to write relevant answers. Marks cannot be awarded for irrelevant discussion.

In terms of presentation, I would ask candidates to try to write clearly and with a dark coloured pen. Also, if a question is divided into separate sections for example, (a), (b) and (c), I would ask that candidates answer each section separately showing a clear division between each section. Some scripts were difficult to read due to the pen used and also because candidates would answer each section in one long paragraph.

Points to note for candidates:

- When answering questions, candidates should consider the marks awarded for each question and use this as a guideline as to the level of detail required.
- In relation to style a number of candidates complete questions in summary style boxes. There is no difficulty with this but candidates must try to write short but detailed sentences rather than wrote one word answers. This proves to the examiner that the candidate completely understands the question set.

Question 1 (Compulsory Question)

Candidates produced a varied standard of answers. In relation to part (a) many candidates incorrectly referred to the five fundamental principles of the ATI Code of Ethics and in some cases candidates referred to the main Articles contained in the Sale of Goods Act 1979. The references made to consumer law were most surprising and

emphasized the fact that candidates are not learning the topics covered in the compulsory section of the syllabus in sufficient detail.

With regard to part (b) those candidates who did not answer part (a) correctly failed to answer this question correctly. Again many candidates referred to other sources of consumer law in Northern Ireland. A high number of candidates did not attempt to answer part (a) or part (b). This is very disappointing as those candidates who revised this area were able to gain full marks.

In relation to part (c) candidates confused wrongful trading with other offences such as money laundering.

It is important for candidates to recognize that the compulsory question is written in such a way as to enable a candidate who has prepared for the exam to gain full marks. Candidates can gain up to 20 marks in one question and therefore those candidates who score well in this question generally pass the exam with a good mark.

Question 2

The majority of candidates did not realize that the "membership requirements to operate as a partnership" was that a minimum of two members is required. Some candidates did mention this fact in part (b) and although they did not answer part (a) the mark was awarded.

For part (b) the majority of candidates were able to discuss the different types of partners: sleeping, active and limited. Many candidates scored full marks in this section. Part (c) was generally well answered but weaker candidates confused duties with rights. Overall, this question was one of the best answered.

Question 3

This question was very poorly answered by the majority of candidates. Candidates obviously assumed in their revision that the question on a company's capital would test their knowledge of a company's share capital and not its loan capital i.e. debentures. Strong candidates were able to define a debenture and give a detailed answer for parts (a) and (b).

In relation to part (c) weaker candidates were able to pick up some marks in this part. Generally this part was well answered. This part of the question has been tested in previous papers.

Those candidates who performed well in the exam displayed a very competent level of knowledge of this topic. As mentioned in the overall comments a significant number of candidates in answering this question provided detailed discussions on irrelevant topics, such as share capital. Although factually correct they did not answer the question set and could not be awarded any marks.

Question 4

This question was attempted by very few candidates. Strong candidates gave detailed answers to both part (a) and (b). Weaker candidates did not display any knowledge of a 'shadow director' and confused this concept with that of a 'non executive' director. In relation to part (b) a significant number of candidates discussed director's duties and company law offences and failed to answer the question set.

Question 5

This question was very poorly answered by the vast majority of candidates. Generally, in relation to part (a) candidates did not display any knowledge of general or special resolutions and in part (b) candidates were not able to describe the role of chairman. A significant number of candidates discussed the necessity of a quorum at a company meeting and the ability to nominate a proxy. Neither of these points scored any marks.

Candidates who performed well in the exam were able to gain full marks by answering this question with short bullet point sentences.

Question 6

This question was quite well answered by the majority of candidates. In relation to part (a) many candidates were able to correctly define the term administration. Although, weaker candidates confused this concept with liquidation.

In answering part (b) many candidates gained full marks by clearly identifying the role of the administrator in short but concise sentences. Weaker candidates stated that the role of administration was to wind up the company and pay off the creditors.

In part (c) the majority of candidates correctly answered this question.

Overall, those candidates who did not score well in this question failed to realize that this question did not require a discussion on liquidation and the differences between voluntary and compulsory liquidation.

Question 7

This question was attempted by nearly all candidates and the majority of candidates scored very well, with a minority scoring full marks. In relation to part (a) weaker candidates confused the civil courts with the criminal courts and failed to gain any marks in part (a). Part (b) was generally well answered. In part (c) many candidates failed to answer this part at all and those who did lost marks for failure to go into enough detail in part (c). When answering questions, candidates should consider the marks awarded for each question and use this as a guideline as to the level of detail required. In part (a) candidates should have given a minimum of two factual points about each civil court.

Candidates who scored poorly in part (c) generally scored well in parts (a) and (b) and demonstrated a competent knowledge of the sources of law and the civil courts.

Question 8

This question was not attempted by a large number of candidates and overall the answers provided by candidates were not satisfactory. Only a minority of candidates were able to correctly state the meaning of an exemption clause in part (a), and the means of incorporation in part (b). I was concerned that the majority of candidates who did score well in parts (a) and (b) failed to apply the theory in practice and answered part (c) incorrectly.

Question 9

This question was quite well answered by the stronger candidates but very poorly answered by the weaker candidates. In relation to parts (a) and (c) many candidates did not even attempt to answer these sections. The majority of candidates gained marks in this question by answering part (d) correctly and in unnecessarily significant detail. Candidates should consider the level of detail required by looking at the marks awarded for each part. The maximum mark for part (d) was two marks.

Question 10

The majority of candidates who chose to answer this question failed to answer the question set. The majority of candidates could not explain the remoteness of damages test and failed to gain any marks in part (a). Very strong candidates discussed the 'foreseeability' test and referred to case law. Many candidates who attempted this question discussed the other elements of negligence in great detail, but could not be awarded any marks. Many candidates did gain some marks in this question by answering part (b) correctly even if they had not attempted part (a).

Question 11

The answers to this question were generally good. Strong candidates provided detailed answers and gained full marks. Weaker candidates were able to gain at least half the available marks. Generally candidates scored well in this question and displayed a competent level of knowledge of agency law. I would consider this question to be one of the best answered in the Autumn examination.