
Law & Ethics

Northern Ireland

1st Year Examination

May 2010

Paper, Solutions & Examiner's Report



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

Friday 21st May 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)** Peter works as an in-house solicitor for a communications company called Alphabet Communications Plc. In February 2010, he was told in confidence that a rival company, Yellow Brick Road Communications Plc was planning to take over the company. Two days before the proposed takeover was made public Peter's brother, James, bought 80,000 Alphabet Communications Plc shares at £1.30 per share. On the first Monday in May the takeover was announced at an agreed share price of £1.80. As a result of the price increase, James made a profit of £40,000. Three weeks later James bought Peter a new car valued for £20,000, exactly half of the profit made from the Alphabet Communications Plc shares trade.

Discuss the elements of the offence of insider dealing and determine whether Peter and James are guilty of this offence. Comment also on the sanctions likely to be imposed upon both Peter and James if they are found guilty of insider dealing.

12 Marks

- (b)** In the context of the Appeals Tribunal of Accounting Technicians Ireland, explain the following:

1) Outline the composition of the Appeals Tribunal.

2 Marks

2) List any THREE grounds for appealing an Order of the Complaints Committee or Disciplinary Tribunal.

3 Marks

3) List any TWO potential findings of the Appeals Tribunal.

2 Marks

4) State the time limit for appealing an Order of the Complaints Committee or Disciplinary Tribunal to the Appeals Tribunal.

1 Mark

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

(a) Edward and Emmet are considering converting their private company, Cullen Enterprises Ltd, into a public limited company and have heard that they will require a trading certificate to trade as a public limited company. Outline the prerequisite requirement to obtain a trading certificate, and state what other documents Cullen Enterprises Ltd will have to submit to Companies House as evidence that they satisfy the prerequisite requirement for becoming a public company.

5 Marks

(b) One of the main characteristics of a registered company is "*separate legal personality*". Explain the meaning of this term.

5 Marks

Total 10 Marks

QUESTION 3

Philosophy Ltd has been in financial difficulty for the last two years and needs to raise extra finance to keep the company trading. In this regard they are proposing to issue 100,000 £1 preference shares at a discount of £0.30 per share. They will use the monies in the share premium account to pay for the discount in relation to the issuing of these preference shares. In this regard explain the following:

(a) The nature of a preference share.

4 Marks

(b) The rules regarding issuing shares at a discount, and whether Philosophy Ltd can issue discounted shares.

2 Marks

(c) Define the term "share premium account" and state the other purposes for which monies held in this account can be utilised.

4 Marks

Total 10 Marks

P.T.O.

QUESTION 4

(a) Bella has been an executive director of Denali Enterprises Ltd, a management consultancy company, for the past three years. Denali Enterprises Ltd's contract for management consultancy services with Coleraine City Council has recently come up for renewal and Denali Enterprises Ltd has been informed by the Council that as they have been unhappy with the level of service and costs provided by the company, that they will not be renewing the contract. Within a week of this notification, Bella is contacted by a Senior Principal Officer in Coleraine City Council and told that throughout the tenure of Denali Enterprises Ltd's contract with the Council, they were always satisfied with the work done by Bella, and that if Bella left Denali Enterprises Ltd and established her own company, they would be happy to award her a five year contract for management consultancy services. Following this discussion Bella resigns her position with Denali Enterprises Ltd and establishes a company to undertake the management consultancy contract with the Council. When Denali Enterprises Ltd discover what Bella has done they sue her for breach of her statutory duties as a company director to: (1) promote the success of the company and (2) to avoid conflict of interest situations. Discuss the nature of both of these duties and assess whether Bella is in breach of her duties, and the likely consequences of any such breach.

8 Marks

(b) List any FOUR other statutory duties that a director owes a company.

2 Marks**Total 10 Marks****QUESTION 5**

Aromatic Manufacturing Ltd would like to change their Articles of Association. The directors have been told that as a private company they are not required to hold a general meeting to change the Articles but can effect this alteration by way of a written resolution. In this regard they seek your advice on the following matters:

(a) Define the TWO types of written resolutions that a private company may pass and state the type that must be passed to change the Articles of Association.

1 Mark

(b) List the TWO persons who can propose a written resolution.

2 Marks

(c) List the TWO business decisions that CANNOT be passed by a written resolution and require convening a general meeting.

2 Marks

(d) Discuss the TWO methods by which voting can be effected at a general meeting.

5 Marks**Total 10 Marks****P.T.O.**

QUESTION 6

a) Define the term "Liquidation".

2 Marks

b) Outline any FOUR differences between a Member's Voluntary Liquidation and a Creditor's Voluntary Liquidation.

8 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) Explain the criminal jurisdiction of the following courts:

- | | | |
|------|---|----------------|
| i. | The Magistrates Court | 2 Marks |
| ii. | The Crown Court | 2 Marks |
| iii. | The Court of Appeal | 2 Marks |
| iv. | The Supreme Court (formerly the House of Lords) | 2 Marks |

(b) List any FOUR differences between criminal law and civil law in Northern Ireland.

2 Marks

Total 10 Marks

QUESTION 8

Megan works as a book-keeper with Brown & Barnaby Solicitors. Last Saturday night Megan won the £2 million jackpot in the English lottery. First thing on Sunday morning Megan contacted the managing partner at Brown & Barnaby Solicitors and informed him that she was resigning her position with immediate effect, despite the fact that her employment contract requires her to give the practice one month's notice to terminate her employment. The managing partner is very distressed by this news as the Law Society of Northern Ireland is due to visit the practice this week to review their client accounts, and Megan had sole responsibility for the maintenance of these accounts.

a) Discuss the equitable remedy of an Order for Specific Performance.

7 Marks

b) Determine the likelihood of Brown & Barnaby Solicitors obtaining such an Order from the Court to compel Megan to return to work and complete her notice period, as stated in her contract.

1 Mark

c) Assuming that Brown & Barnaby Solicitors fail to obtain such an Order, outline any other remedies available to the firm in respect of Megan's breach of contract.

2 Marks

Total 10 Marks

QUESTION 9

Owen has been employed as a security officer with the Belfast Airport Authority for the past FIVE years. His contract states that he is employed to work from 9.00 a.m. to 5.30 p.m. five days a week. Last month he was called to a meeting with the Airport's Human Resource Department and informed that he was being switched to the night shift, working from 12.00 a.m. to 9.00 a.m., with effect from the 1st July 2010. Owen explained that due to his family situation that he was not in a position to work the night shift, but he was told that he had no option but to switch to the night shift, and that if he did not switch to this shift that he would be dismissed.

Since this meeting Owen has made several attempts to meet with the Human Resource Manager to discuss this proposed contractual alteration, but the manager has refused to meet with Owen, stating that his decision regarding the alteration is final. In light of this situation, Owen is considering resigning from his position and suing his employer for constructive dismissal.

a) Define the term "constructive dismissal" and explain the burden of proof when such a claim is raised.

2.5 Marks

b) Explain any FOUR actions that may amount to a fundamental breach of contract and facilitate a claim for constructive dismissal.

6 Marks

c) Assess the potential success or otherwise of Owen's proposed claim of constructive dismissal.

1.5 Marks

Total 10 Marks

QUESTION 10

Three months ago, Alice went to her doctor complaining of chest pains and shortness of breath. Her doctor assessed her and sent her to the hospital for further tests. The hospital diagnosed her with a heart condition and she was prescribed medication to manage this condition. Last week she was back at her doctor's office again, complaining that she felt worse. On review her doctor has discovered that she was prescribed the incorrect medication and that this medication has made her condition worse.

Alice has taken legal advice and is planning on suing the hospital for negligence. In the context of negligence, explain the various factors that the Court will take into consideration in determining whether there has been a breach of the standard of care by the hospital.

Total 10 Marks

QUESTION 11

(a) The Consumer Protection from Unfair Trading Regulations 2008 refer to 31 practices that are considered unfair and prohibited in all circumstances. Outline any FIVE of these prohibited practices.

7.5 Marks

(b) Outline the main functions of the Department of Trade, Enterprise and Investment in relation to these Regulations.

2.5 Marks

Total 10 Marks



1st Year Examination: Summer 2010

Law & Ethics (NI)

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. Peter works as an in-house solicitor for a communications company called Alphabet Communications Plc. In February 2010, he was told in confidence that a rival company, Yellow Brick Road Communications Plc was planning to take over the company. Two days before the proposed takeover was made public Peter's brother, James, bought 80,000 Alphabet Communications Plc shares at £1.30 per share. On the first Monday in May the takeover was announced at an agreed share price of £1.80. As a result of the price increase, James made a profit of £40,000. Three weeks later James bought Peter a new car valued for £20,000, exactly half of the profit made from the Alphabet Communications Plc shares trade.

Discuss the elements of the offence of insider dealing and determine whether Peter and James are guilty of this offence. Comment also on the sanctions likely to be imposed upon both Peter and James if they are found guilty of insider trading.

(12 marks)

- B. In the context of the Appeals Tribunal of Accounting Technicians Ireland, explain the following:

1) Outline the composition of the Appeals Tribunal.

(2 marks)

2) List any THREE grounds for appealing an Order of the Complaints Committee or Disciplinary Tribunal.

(3 marks)

3) List any TWO potential findings of the Appeals Tribunal.

(2 marks)

4) State the time limit for appealing an Order of the Complaints Committee or Disciplinary Tribunal to the Appeals Tribunal.

(1 mark)

Total 20 Marks

- A. Insider dealing: definition and overview of the prohibition against insider trading – effect of abuse of price sensitive information on share prices – artificiality – manipulation – effect on the integrity of the stock market **(1 mark)** – action is now generally regulated by the Proceeds of Crime Act 2002 – the 2002 Act prohibits: (1) the use of the inside information, (2) the disclosure of inside information, and (3) recommending or inducing another to use the inside information – definitions of insider: (1) primary insider – this is a person who has information from an inside source and knows that the information is inside information – he obtains the

Solution to Question 1 (cont'd)

information through his employment with the company – examples of a primary insiders include: employees, directors, shareholders or professionals (such as the company auditor) – (2) secondary insider: this is a person who receives information from an inside source – definition of inside information: (1) information that is specific or precise, (2) information that has not yet been made public, (3) information that relates to the particular issuer of securities or the securities themselves, and (4) that if made public would have a significant effect on the price of the securities to which the information relates – possible defences include: (1) that the person did not expect to make a profit or avoid a loss, (2) that the person believed that inside information was disclosed idly, or (3) that the person would have done what they did even without the information **(7 marks)** – penalties for breach of the legislation: civil liability – compensation to any party to the transaction who sustained a loss and/or an account to the company for all unlawful profit made – criminal liability: on conviction a term of imprisonment not exceeding 7 years and/or an unlimited fine **(3 marks)** – conclusion that both Peter and James are liable for insider trading – through the disclosure and use of information of a precise nature likely to impact the value of shares **(1 mark)**

- B.1) Composition of the Appeals Tribunal: members are appointed by the Disciplinary Tribunal – composition: (1) one lawyer, who is not a member of Accounting Technicians Ireland, who will act as chairman and (2) two other persons, one of whom should be a member of Accounting Technicians Ireland and the other who should not be a member of Accounting Technicians Ireland – can't be a members of the Appeals Committee if you are involved in the Complaints Committee or Disciplinary Tribunal **(2 marks)**
- B.2) Grounds for Appeal: (1) the finding is wrong, (2) the Order is excessive, (3) the finding and/or the Order is flawed because of a serious procedural irregularities or other irregularities in the proceedings before the Complaints Committee or Disciplinary Tribunal, and/or (4) the award of costs against the member is manifestly excessive **(any 3 x 1 mark = 3 marks)**
- B.3) Outcome of Appeals Tribunal: (1) they can affirm, vary or rescind any finding or Order of the Disciplinary Tribunal in respect of which the appeal was brought, (2) they can substitute any other finding or Order which the Disciplinary Tribunal might have made on the original formal complaint, (3) they can order that the formal complaint that resulted in the finding or Order of the Disciplinary Tribunal, in respect of which the appeal was brought, be heard *de novo* by a different Disciplinary Tribunal, or (4) they can make an order for costs **(any 2 x1 mark = 2 marks)**
- B.4) Time Limit for an Appeal: 21 days **(1 mark)**

Solution to Question 2

A. Edward and Emmet are considering converting their private company, Cullen Enterprises Ltd, into a public limited company and have heard that they will require a trading certificate to trade as a public limited company. Outline the prerequisite requirement to obtain a trading certificate, and state what other documents Cullen Enterprises Ltd will have to submit to Companies House as evidence that they satisfy the prerequisite requirement for becoming a public company.

(5 marks)

B. One of the main characteristics of a registered company is "separate legal personality". Explain the meaning of this term.

(5 marks)**Total 10 Marks**

- A. Trading Certificate: prerequisite requirement is that the company meets the minimum statutory requirements regarding share capital – a public company must have a minimum of £50,000 allotted share capital with at least 25% of this sum fully paid up by the members (£12,500) **(3 marks)** – the documents that must be submitted to Companies House to receive this certificate includes: (1) auditor's report, (2) the balance sheet, and (3) a written statement by the company auditor **(2 marks)**
- B. Separate Legal Personality: this concept means that a company has a separate legal status from its members – and in reality has a distinct personality from the natural persons who set up the company – this was first recognised in the case of Salomon v Salomon & Co Ltd (1897) – this separate personality means that a company can: (1) own their own property, (2) enter in contractual relations with either natural persons or other companies, (3) commit crimes and be held responsible for such crimes, (4) has perpetual existence, and (5) can be sued or sue other persons – in addition, this separate personality also gives the shareholders of the company limited liability **(5 marks)**

Solution to Question 3

Philosophy Ltd has been in financial difficulty for the last two years and needs to raise extra finance to keep the company trading. In this regard they are proposing to issue 100,000 £1 preference shares at a discount of £0.30 per share. They will use the monies in the share premium account to pay for the discount in relation to the issuing of these preference shares. In this regard explain the following:

A. The nature of a preference share.

(4 marks)

B. The rules regarding issuing shares at a discount, and whether Philosophy Ltd can issue discounted shares.

(2 marks)

C. Define the term "share premium account" and state the other purposes for which monies held in this account can be utilised.

(4 marks)**Total 10 Marks**

- A. Preference Shares – these are shares issued by a company – with a fixed preferential dividend – this dividend is normally cumulative, so if no profit is declared in any particular year, the right to a dividend may accumulate to the next profit period – generally these shares have no ability to influence company policy as they have no voting rights – they are only repaid upon liquidation once all external debt has been satisfied (and are paid in priority to ordinary shares) – they provide no capital gain upon the liquidation of the company if there are available assets upon

Solution to Question 3 (Cont'd)

- winding-up, only entitled to repayment of original investment sum but this is paid in priority to ordinary shareholders **(4 marks)**
- B. Shares at a discount: there is a general prohibition in company law in relation to issuing shares at a discount as this act affects the integrity of the capital account (Sections 552-3 CA 2006) – a company that does sell shares below the nominal value will be liable to pay the difference between the discounted price and the nominal value, plus interest – therefore, Philosophy Ltd cannot issue shares at a discount **(2 marks)**
- C. Share Premium Account: where a share is sold for above its nominal value the value received on the share in excess of the nominal value is referred to as the share premium capital/account – for example, if a share with a nominal value of £1 is sold for £1.25 the £0.25 is the share premium **(1 mark)** – this excess amount is lodged in the share premium account and this account can be used to: (1) write off expenses in relation to issue of shares/debentures, (2) to write off the commission in relation to the issue of the shares, and (3) to pay up new shares to be issued to members as bonus shares **(3 marks)**

Solution to Question 4

- A. Bella has been an executive director of Denali Enterprises Ltd, a management consultancy company, for the past three years. Denali Enterprises Ltd's contract for management consultancy services with Coleraine City Council has recently come up for renewal and Denali Enterprises Ltd has been informed by the Council that as they have been unhappy with the level of service and costs provided by the company, that they will not be renewing the contract. Within a week of this notification Bella is contacted by a Senior Principal Officer in Coleraine City Council and told that throughout the tenure of Denali Enterprises Ltd's contract with the Council that they were always satisfied with the work done by Bella, and that if Bella left Denali Enterprises Ltd and established her own company, that they would be happy to award her a five year contract for management consultancy services. Following this discussion Bella resigns her position with Denali Enterprises Ltd and establishes a company to undertake the management consultancy contract with the Council. When Denali Enterprises Ltd discover what Bella has done they sue her for breach of her statutory duties as a company director to: (1) promote the success of the company and (2) to avoid conflict of interest situations. Discuss the nature of both of these duties and assess whether Bella is in breach of her duties, and the likely consequences of any such breach.
- (8 marks)**
- B. List any FOUR other statutory duties that a director owes a company.

(2 marks)**Total 10 Marks**

- A. Directors Statutory Duties: (1) to promote the success of the company encompasses the duty to act in good faith and in the best interests of the company – it is considered the most important duty of a director – it requires the directors to act in the best interest of the shareholders of the company as a whole, and its employees (when the company is solvent) and in the best interest of the creditors (when the company is insolvent) – this duty is determined subjectively – the director when making a decision must consider the following factors: (a) the long term consequences of any decision made, (b) the interests of the company employees, (c) the need to develop good relationships with suppliers and customers, (d) the impact of their decision on the community and environment, (e) the desirability to maintain

Solution to Question 4 (Cont'd)

a reputation for high standards in business conduct, and (f) the need to act fairly in relation to members of the company **(3 marks)** and (2) to avoid conflicts of interests relates to any situation in which a director has a direct or indirect conflict with the company – this means that a director cannot: (a) have an interest in a competing company contract, without disclosure and/or, (b) personally buy a company asset or sell a personal asset to the company, without disclosure and/or, (c) divert business opportunities from the company in order to benefit personally from them – *Industrial Development Consultants Ltd v Cooley (1972)* **(3 marks)** – conclusion: that a breach of these duties may result in a claim for damages, compensation or an account for profits against the director for any loss the company suffered as a result of the breach **(1 mark)** – and that it is likely that Denali Enterprises Ltd will sue Bella for breach of these duties based on the case of *IDC v Cooley* and that she may have to account for profits **(1 mark)**

- B. Section 170-177 CA 2006: (1) duty to act within their powers, (2) duty to exercise independent judgment, (3) duty to exercise reasonable skill, care and diligence, (4) duty not to accept benefits from third parties, and (5) duty to declare an interest in proposed transaction or arrangement **(any 4 x 0.5 mark = 2 marks)**

Solution to Question 5

Aromatic Manufacturing Ltd would like to change their Articles of Association. The directors have been told that as a private company they are not required to hold a general meeting to change the Articles but can effect this alteration by way of a written resolution. In this regard they seek your advice on the following matters:

(a) Define the TWO types of written resolutions that a private company may pass and state the type that must be passed to change the Articles of Association.

1 Mark

(b) List the TWO persons who can propose a written resolution.

2 Marks

(c) List the TWO business decisions that CANNOT be passed by a written resolution and require convening a general meeting.

2 Marks

(d) Discuss the TWO methods by which voting can be effected at a general meeting.

5 Marks

Total 10 Marks

- A. Written Resolutions: these can be (1) a written special resolution or (2) a written ordinary resolution – in this situation the company must pass a special written resolution **(1 mark)**
- B. Persons who can propose a written resolution are: (1) company directors or (2) shareholders with a 10% shareholding **(2 marks)**
- C. A written resolution cannot be used for any decision to: (1) remove a director before the expiry of his term in office, or (2) to remove an auditor before the expiry of his term in office **(2 marks)**

Solution to Question 5 (Cont'd)

- E. Voting at Meetings: voting is governed by a company's Articles of Association – the general rule is that it takes place first by a show of hands – and a result is declared by the chairperson of the meeting – this declaration is deemed conclusive – after a show of hands the chairperson or 3 shareholders (present in person or by proxy) or 10% of the voting shareholders present in person or by proxy, can demand for poll (secret ballot) – the results of the poll take precedence over show of hands – poll voting depends upon number of shares held by the shareholder – the right to conduct a poll cannot generally be excluded by the Articles **(5 marks)**

Solution to Question 6

A. Define the term "Liquidation".

(2 marks)

B. Outline any FOUR differences between a Member's Voluntary Liquidation and a Creditor's Voluntary Liquidation.

(8 marks)

Total 10 Marks

- A. Liquidation: this is the process by which a company is brought to an end – the company ceases to exist and the powers of the directors are transferred into the hands of the liquidators – the aim of liquidation is to resolve the company's affairs, pay off the company's debts and distribute the remainder of the assets to the shareholders **(2 marks)**
- B. Members versus Creditors Voluntary Liquidation: (1) Members – company is solvent, Creditors – company is insolvent, (2) Members – initiated by the directors following a declaration of solvency and special resolution, Creditors – initiated absent a declaration of solvency following the passing of a resolution where the insolvency of the company is highlighted, (3) Members liquidation – the members appoint the liquidator – whereas Creditors liquidation – the creditors appoint the liquidator, (4) Members – the members supervise the liquidators exercise of his powers, Creditors – the Liquidation Committee supervise the liquidators exercise of his powers, (5) Members – role of the liquidator is to realise the company's assets and pay the creditors in full, Creditors – role of the liquidator is to realise the company's assets and distribute the proceeds to the company's creditors, and (6) Members – on completion the liquidator will present a final report to the shareholders and be released from his office – the liquidator will notify Companies House of the holding and the results of the meeting, Creditors – on completion the liquidator will present a final report to the creditors and shareholders and be released from his office – the liquidator will notify Companies House of the holding and the results of the general meeting **(any 4 x 2 marks = 8 marks)**

Solution to Question 7

A. Explain the criminal jurisdiction of the following courts:

1) The Magistrates Court

(2 marks)

2) The Crown Court

(2 marks)

3) The Court of Appeal

(2 marks)

4) The Supreme Court (formerly the House of Lords)

(2 marks)

B. List any FOUR differences between criminal law and civil law in Northern Ireland.

(2 marks)

Total 10 Marks

Solution to Question 7 (Cont'd)

- A.1) Magistrates Court: this Court deals with summary offences (minor offences) – such as road traffic offences, public order offences, littering, loitering, shoplifting etc – the maximum sanction that can be imposed by the court is 6 months imprisonment and/or a fine not exceeding £2000 **(2 marks)**
- A.2) Crown Court: This Court hears all indictable (serious) offences – for example, murder, rape, aggravated sexual assault, treason and perjury – all proceedings will commence with the arraignment of the accused where he will be brought before the Court and asked to plead guilty or not guilty – cases are heard by a judge and jury – there is a right to appeal **(2 marks)**
- A.3) Court of Appeal: It is an appellate court, hearing appeals from the Magistrates and Crown courts – it is divided into two sections – criminal and civil – the court may (1) allow the appeal and acquit the defendant, (2) allow the appeal and reduce, vary or increase the sentence, (3) allow the appeal and order a retrial of the case, or (4) dismiss the appeal **(2 marks)**
- A.4) Supreme Court (Formerly the House of Lords) – this is a court of final resort and hears appeals of major importance – five law lords hear the cases – and the Court is subject to European law **(2 marks)**
- B. Differences: (1) law: private law and public law, (2) parties: plaintiff v defendant and prosecution v defence, (3) objective: sued and prosecuted, (4) tests: balance of probabilities v beyond all reasonable doubt, (5) heard: judge and jury (6) finding: liable/not liable and guilty/not guilty, (7) proceedings: indictment and summons/indictment, (8) penalties: damages/injunctions and fines/imprisonment, and (8) cases: breach of contract/tort/family law v murder **(Any 4 x 0.5 marks = 2 marks)**

Solution to Question 8

Megan works as a book-keeper with Brown & Barnaby Solicitors. Last Saturday night Megan won the £2 million jackpot in the English lottery. First thing on Sunday morning Megan contacted the managing partner at Brown & Barnaby Solicitors and informed him that she was resigning her position with immediate effect, despite the fact that her employment contract requires her to give the practice one month's notice to terminate her employment. The managing partner is very distressed by this news as the Law Society of Northern Ireland is due to visit the practice this week to review their client accounts, and Megan had sole responsibility for the maintenance of these accounts.

- a) Discuss the equitable remedy of an Order for Specific Performance. **7 Marks**
- b) Determine the likelihood of Brown & Barnaby Solicitors obtaining such an Order from the Court to compel Megan to return to work and complete her notice period, as stated in her contract. **1 Mark**
- c) Assuming that Brown & Barnaby Solicitors fail to obtain such an Order, outline any other remedies available to the firm in respect of Megan's breach of contract. **2 Marks**

2 Marks
Total 10 Marks

Solution to Question 8 (Cont'd)

- A. Order for Specific Performance: this is where the court orders the defaulting party to perform their specific obligations under the contract on the terms agreed **(1 mark)** – the courts will only do this when damages are an inadequate compensation and importantly, where the order would not cause undue hardship on the party in breach – the Court will never grant an order for specific performance in the following contracts: (1) Contracts for Personal Services: these would include employment contracts, or contracts to perform at a specific concert/event or to take part in a film or television project – the rationale behind this exclusion is that such an order would be analogous to forced labour and is futile where the other party simply refuses to perform or performs to an inadequate standard (2) Contracts to advance money, (3) Where the court cannot supervise performance of the contract (where constant supervision by a court is required), (4) Where one of the parties is an infant/minor, and (5) Where the contract is neither fair nor just – and where the conduct of the party seeking specific performance is questionable **(6 marks)**

B. Conclusion that it is unlikely that the Court will grant the Order as this is a contract for personal services **(1 mark)**

- C. Remedies: only other available remedy is a claim for damages – a sum of money to compensate Brown & Barnaby Solicitors for losses sustained as a consequence of Megan's breach of contract (to put them in the same position they would be in had the contract been properly performed) – quantum is based on the remoteness of the loss **(2 marks)**

Solution to Question 9

Owen has been employed as a security officer with the Belfast Airport Authority for the past FIVE years. His contract states that he is employed to work from 9.00 a.m. to 5.30 p.m. five days a week. Last month he was called to a meeting with the Airport's Human Resource Department and informed that he was being switched to the night shift, working from 12.00 a.m. to 9.00 a.m., with effect from the 1st July 2010. Owen explained that due to his family situation that he was not in a position to work the night shift, but he was told that he had no option but to switch to the night shift, and that if he did not switch to this shift that he would be dismissed.

Since this meeting Owen has made several attempts to meet with the Human Resource Manager to discuss this proposed contractual alteration, but the manager has refused to meet with Owen, stating that his decision regarding the alteration is final. In light of this situation, Owen is considering resigning from his position and suing his employer for constructive dismissal.

- A. Define the term "constructive dismissal" and explain the burden of proof when such a claim is raised. **(2.5 marks)**
- B. Explain any FOUR actions that may amount to a fundamental breach of contract and facilitate a claim for constructive dismissal. **(6 marks)**
- C. Assess the potential success or otherwise of Owen's proposed claim of constructive dismissal. **(1.5 marks)**

Total 10 Marks

Solution to Question 9 (Cont'd)

- A. Constructive Dismissal: this is where the employee terminates the contract under which they are employed because of the conduct of the employer – the conduct of the employer must be sufficiently serious as to amount to a fundamental breach of contract entitling the employee to resign from their employment – in this instance

the onus lies on the employee to prove that what has happened amounted to a dismissal **(2.5 marks)**

- B. Fundamental Breach of Contract: (1) Changes to employee's pay – such as a reduction in pay even by a small amount – Industrial Rubber Products v Gillon (1977) or unwarranted refusal to increase the employee's pay, (2) Change in hours of work – or to the shift pattern (Simmonds v Dauty Seals Ltd (1977)), (3) Fundamental change in duties – removing the largest/most enjoyable part of the work (Coleman v Baldwin (1977)), (4) Failure to make the workplace employee friendly – such as failure to implement a 'no smoking' policy – Waltons & Moose v Dorrington (1977), or failure by an employer to make reasonable adjustments to a workplace for an employee suffering with a disability – Nottinghamshire County Council v Meikle (2004), (5) Failure to provide safe system of work and comply with legislation, for example, safety at work legislation, and (6) Employers conduct towards employee, for example, punishment out of proportion to the offence, inability to exercise grievance policies etc **(any 4 x 1.5 marks = 6 marks)**
- C. Conclusion: that Owen's claim is likely to be successful as there was a unilateral alteration to his contract – by a change in shift pattern – and although Owen has attempted to discuss this with his employer – his employer has acted unreasonably in the circumstances **(1.5 marks)**

Solution to Question 10

Three months ago Alice went to her doctor complaining of chest pains and shortness of breath. Her doctor assessed her and sent her to the hospital for further tests. The hospital diagnosed her with a heart condition and she was prescribed medication to manage this condition. Last week she was back at her doctor's office again, complaining that she felt worse. On review her doctor has discovered that she was prescribed the incorrect medication and that this medication has made her condition worse.

Alice has taken legal advice and is planning on suing the hospital for negligence. In the context of negligence, explain the various factors that the Court will take into consideration in determining whether there has been a breach of the standard of care by the hospital.

Total 10 Marks

- Standard of Care: issue of whether or not the standard of required care is breached is ascertained based upon the reasonable man test – in effect would a hypothetical person of reasonable prudence, common sense & common knowledge have committed the act complained of **(2 marks)**
- In determining whether a reasonable man would act in a certain manner the Court review the following factors: (1) the probability of the accident – the higher the probably of an accident – the higher the standard of care it carries – in Glasgow Corporation v Taylor (1922) the warning notice was not deemed sufficient protection to prevent children eating poisonous berries, (2) the gravity of the threatened injury – the higher the gravity, the higher the standard imposed – in Paris v Stepney Borough Council (1951) because the gravity of the injury was high the failure of the defendant to take reasonable measures to reduce a risk breached the standard of care, (3) the social utility of the defendant's actions – the motivation behind the defendants conduct may be a factor in determining negligence, Watt v Hertfordshire

Solution to Question 10 (Cont'd)

County Council (1954), (4) issues of costs and practicalities – such as the costs of implementing precautions must be weighed against likelihood of risk of injury, and (5) general practice and custom, if the defendant is carrying out general practice or custom within his profession the act may not be considered negligent unless the

practice itself is not reasonable – in Re Herald of Free Enterprise (1987) although not checking the bow doors on a ship was practice, the practice was not satisfactory according to the court who held defendant negligent – none of the factors are conclusive of themselves and all relevant factors are taken into consideration by the Courts – although based on the facts it is likely that the actions of the doctor are in breach of the required standard **(any 4 x 2 marks = 8 marks)**

Solution to Question 11

A. The Consumer Protection from Unfair Trading Regulations 2004 refer to 31 practices that are considered unfair and prohibited in all circumstances. Outline any FIVE of these prohibited practices.

(7.5 marks)

B. Outline the main functions of the Department of Trade, Enterprise and Investment in relation to these Regulations.

(2.5 marks)

Total 10 Marks

- A. Prohibited practices include (but are not limited to): (1) a representation that the trader has an approval, authorisation or endorsement of a regulatory body that the trader does not have, (2) a representation that the trader is about to cease trading or move premises, if the trader is not, (3) a representation that describes a product as "gratis", "free", "without charge" or anything similar, if a consumer has to pay anything other than the necessary and reasonable cost of - (i) responding to the representation, and (ii) collecting the product or having it delivered, (4) making a false representation that a product is available only for a limited time, or on particular terms for a limited time, in order to elicit an immediate decision from a consumer, depriving the consumer of sufficient opportunity or time to make an informed choice in relation to the trader's product, (5) using editorial content in the media to promote a product (if a trader has paid for that promotion) if it is not made clear that the promotion is a paid promotion, whether in the content itself or in any oral, written, visual or descriptive representation in the promotion, (6) promoting a product (similar to that of another manufacturer) in such a manner as to deliberately mislead or deceive a consumer into thinking that the product is manufactured by that manufacturer, when it is not, (7) operating, running or promoting a competition or prize promotion without awarding the prizes described or reasonable equivalents, (8) failing to comply with a consumer's request to leave the consumer's residence or to not return (except in circumstances and to the extent justified or permitted by or under law in order to enforce a contractual obligation), (9) persistently failing to comply with a consumer's request to cease (i) communicating or initiating unwanted or unsolicited contact with, or (ii) making or sending unwanted or unsolicited representations to, the consumer by telephone, fax, email or any other electronic means or remote media (except in circumstances and to the extent justified or permitted by or under law in order to enforce a contractual obligation), or (10) in relation to any product that a consumer does not solicit, demanding that the consumer (i) make immediate or deferred payment for the product, or (ii) return or keep the product safe (inertia selling) **(any 5 x 1.5 marks = 7.5 marks)**

Solution to Question 11 (*Cont'd*)

- B. Department of Trade, Enterprise and Investment: its main functions include: (1) to enforce the relevant statutory provisions, (2) to investigate suspected offences, and (3) to refer cases to relevant regulatory bodies who may then take a prosecution, and (4) in the case of a breach to impose a fine up to £5000 or imprisonment up to two years **(2.5 marks)**

1st Examination: Summer 2010

Law & Ethics (NI)

Examiner's Report

Question 1 (Compulsory Question)

Surprisingly, the compulsory question this year was poorly answered. In relation to part (a) many candidates confused the offence of insider dealing with that of money laundering. Also, many candidates incorrectly referred to the breach of the five fundamental principles of the ATI Code of Ethics as well as the breach of director's statutory duties in answering part (a) of this question. With regard to part (b) a remarkable number of candidates confused the Appeals Tribunal with the Complaints Committee and therefore could not gain any marks in this section. This was disappointing as the compulsory question was designed so that it was possible for a 'prepared' candidate to be awarded full marks. Indeed, the majority of candidates who performed well in the compulsory question obtained full marks in part (b).

Question 2

The majority of candidates did not realize that the "pre-requisite to obtain a trading certificate to trade as a public limited company" asked for in part (a) is that a company must have a minimum of £50,000 allotted share capital with at least 25% of this fully paid up. Candidates generally referred only to the documents that must be submitted to a company on incorporation. The candidates that performed well in this question referred to the auditor's report and the balance sheet and were awarded full marks. Part (b) was generally well answered and the majority of candidates referred to the case of *Solomon* and identified the key principles established in this case.

Question 3

In answer to part (a) most candidates were able to state the key characteristics of a preference share and were able to obtain full marks. In relation to part (b) very few candidates displayed knowledge of the rule under the Companies Act 2006 prohibiting a company from selling shares at a discount. In answering part (c) those candidates who were able to define the term 'share premium capital' also demonstrated knowledge of how the monies in the share premium account were utilized. Unfortunately, a minority of candidates confused the uses of the share premium account with the uses of a company's general reserve account.

Overall, candidates answered this question well with the stronger candidates obtaining full marks. I was satisfied that the majority of candidates who attempted this question displayed a competent level of knowledge of this topic.

Question 4

Generally this question was not answered well. In relation to part (a) many candidates were not able to discuss the nature of these two duties in any great detail and few candidates mentioned any possible consequences for a breach of these duties. I was concerned by the number of candidates who considered that Bella had not breached these duties, in particular the duty to avoid a conflict of interest. Candidates who were not sufficiently prepared for this question tended to regurgitate the facts in the question when answering this question. Marks cannot be awarded for this. Part (b) was well answered with the majority of candidates able to state at least four statutory duties of directors.

Question 5

This question was either very well answered by candidates or very poorly answered. The vast majority of candidates who did not score well did not display any knowledge of general or special resolutions and were not able to identify either of the two methods of voting i.e. voting by poll or by a show of hands. 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. In relation to part (d) a strong candidate was able to gain full marks by answering this question with short bullet point sentences.

Question 6

This question was quite well answered. In relation to part (a) many candidates were unable to correctly define the term liquidation. The majority of these candidates stated that liquidation was a process that a company went through when it was unable to pay its creditors and after the process of administration had failed. In answering part (b) many candidates gained full marks by clearly identifying four differences in short but concise sentences. Those candidates who did not score well failed to state the differences between a members and a creditors voluntary liquidation, instead they produced a lengthy account of the process of initiating a members voluntary liquidation at a company meeting. Also, quite a few candidates confused a creditor's voluntary liquidation with a compulsory liquidation of a company.

In relation to style a number of candidates completed part (b) in a summary style box. There is no difficulty with this but a minority of candidates wrote one word answers, for example under the member's voluntary liquidation the word 'solvent'. I would encourage all candidates to use full sentences so that the examiner can be sure that the candidate completely understands the question set. Therefore, students who wrote 'the company must be solvent' gained the maximum mark.

Question 7

This question was attempted by nearly all candidates and the majority of candidates scored very well, with most scoring full marks. Those candidates who lost marks failed to go into enough detail in part (a) and over compensated by a lot of detail in part (b). 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 court and in relation to part (b) candidates should not have listed any more than four differences. Candidates who scored poorly in part (a) generally scored well in part (b) and generally candidates demonstrated a competent knowledge of the differences between criminal and civil law.

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 state that specific performance is granted where damages are considered insufficient. I was concerned that the majority of candidates stated that the court would grant the order compelling Megan to return to work. Candidates did not seem to be familiar with the basic principles of the remedy of specific performance and did not go into sufficient detail in part (a) to be awarded the maximum (7) marks. The majority of candidates scored well in part (c).

Question 9

This question was very well answered and the majority of candidates displayed an excellent understanding of constructive dismissal gaining full marks. Candidates who did not score as well in other questions scored very well in this question. I would consider this question to be the best answered question in this year's examination paper. In relation to part (a) some candidates lost marks as they failed to mention that the burden of proof is on the employee to prove that the actions of the employer amount to dismissal.

Question 10

In contrast to question 9 above, the majority of candidates who chose to answer this question failed to answer the question set. Candidates referred to the 'duty of care' and discussed in detail the tests used by the court to determine if a duty of care was owed. This was unfortunate as no marks could be awarded. The candidates who performed well referred to the 'reasonable' man test used by the court to determine if the standard of care displayed was reasonable in all the circumstances and also referred to relevant case law. As this question had only one part worth the (10) marks, many students failed to obtain any marks in this question.

Question 11

The answer to part (a) was generally very good. Weaker candidates incorrectly referred to the Sale of Goods Act. Part (b) was not as well answered but generally candidates scored well in this question.