
Law & Ethics

Republic of 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 (ROI)

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 the Republic of 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 Ireland. **2 Marks**
- c) Define the offence of reckless 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 Dublin. 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 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**

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

QUESTION 4

In the context of company directors explain the main differences between a Restriction Order and a Disqualification Order.

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 failed to pay the last two instalment payments due on a debenture loan on its main recording studio. The debenture holder, the Provincial Bank of Monaghan, has appointed a Receiver to recover the outstanding amount due on foot of the loan.

a) Define a Receiver and outline the various methods for the appointment of a Receiver.

2.5 Marks

b) Discuss any THREE powers of a Receiver.

4.5 Marks

c) Outline the THREE reasons that might cause the Court to effect the removal of a Receiver.

3 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) All power in the Irish State is vested in THREE different organs of state. List these THREE organs and define the role of each. **4.5 Marks**
- b) List any THREE fundamental human rights guaranteed protection by the Irish Constitution. **1.5 Marks**
- c) Outline the procedure for amending the Constitution. **2.5 Marks**
- d) List the THREE main sources of Irish law. **1.5 Marks**

Total 10 Marks

QUESTION 8

In January 2010 Alison booked a place at a conference that was taking place in Thurles, County Tipperary. As this conference was taking place over three days Alison booked herself into the Thurles 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/exclusion clause in the hotel bedroom.

- a) Define an exclusion clause. **2 Marks**
- b) Explain any TWO methods by which an exclusion clause can be incorporated into a contract. **6 Marks**
- c) Assess whether the Thurles County Hotel can rely on this exclusion 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) List any FOUR categories of workers who are NOT eligible to sue for unfair dismissal.
2 Marks

b) Discuss the nature of the duty imposed upon an employer to follow a set of fair procedures before dismissing an employee. In light of this discussion assess whether Simon's employer treated him fairly in effecting his dismissal.
6 Marks

c) 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 is 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: Autumn 2010

Law & Ethics (ROI)

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 Ireland. **(2 marks)**
- C. Define the offence of reckless trading and outline both 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) 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 1963 to 2009, (2) criminal law – including the Criminal Justice (Theft & Fraud Related Offences) Act 2001 – concept of “false accounting”, (3) common law rules (cases defining duties of directors), (4) the company’s own Memorandum/Articles of Association (regulating acceptable behaviour/procedures etc), or (5) the Listing Rules, published by the Irish Stock Exchange **(4 x 0.5 marks = 2 marks)**

- Reckless Trading: this offence arises where company officers are knowingly party to the carrying on of any of the company in a reckless manner – the offence can be committed by any company officers including directors, secretaries, shadow directors, auditors, liquidators and receivers – examples include: (1) carrying on the business below the standard of their general knowledge, skill and experience, (2) contracting of a debt by the company and where the officers did not honestly believe on reasonable grounds that the company would be able to pay the debt when it fell due for payment as well as other debts, or (3) trading while insolvent - Re Heffernon Kearns Ltd (No.2)(1993) **(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 reckless 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 five 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 Dublin. 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:

- Outline the membership requirements to operate as a partnership in Ireland. **(1 mark)**
 - Explain the various classifications of partners that may exist in a partnership. **(4.5 marks)**
 - 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 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 the CRO 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 (Revenue, Local Authority, employee salaries (accrued but unpaid in the last 4 months) and untaken leave), (4) debentures secured by floating charges (in order of creation & provided they are registered), (5) unsecured creditors, and (6) shareholders **(2.5 marks)**

Solution to Question 4

In the context of company directors explain the main differences between a Restriction Order and a Disqualification Order.

Total 10 Marks

- Restriction & Disqualification Orders: Restriction Orders – these orders can only be brought against directors or shadow directors of a company that is insolvent and is or has gone through the process of winding up – in this situation directors can be restricted from acting directly or indirectly as a director or secretary of a company for a period of up to five years to prevent the conduct of phoenix trading – an application can be made by the Director of Corporate Enforcement, a liquidator or a receiver against any person who was acting as director or shadow director at the time of a company liquidation or within 12 months of the company commencing liquidation **(4 marks)** – whereas a Disqualification Order is an Order brought

against directors, auditors, company officers, liquidators, or receivers – who can be disqualified from taking part in the promotion, formation, or management of any company, either directly or indirectly – a director will be automatically disqualified if he is convicted of an indictable offence under company legislation or if he is convicted of a dishonest or fraudulent offence – the court also has an option to disqualify a director who is guilty of a breach of duty, fraudulent or reckless trading or who is considered unfit to run a company – in addition, disqualification orders can also be imposed where a director is guilty of two or more offences of failing to keep proper books of account, where a company is struck off for failure to file annual returns (subject to several exceptions) and where a director is disqualified in another country – there is no maximum duration on the length of time a director can be disqualified **(6 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 – requires no specific notice except to remove a director/auditor, which requires 28 days – special requires 21 days notice), (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 (Memorandum or 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 (ordinary does not need to be registered whereas all special must be delivered to the CRO within 15 days, otherwise the company is liable to the imposition of a fine) **(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 failed to pay the last two instalment payments due on a debenture loan on its main recording studio. The debenture holder, the Provincial Bank of Monaghan, has appointed a Receiver to recover the outstanding amount due on foot of the loan.

A. Define a Receiver and outline the various methods for the appointment of a Receiver.

(2.5 marks)

B. Discuss any THREE powers of a Receiver.

(4.5 marks)

- C. Outline the THREE reasons that might cause the Court to effect the removal of a Receiver.

(3 marks)

Total 10 Marks

- A. Receiver: this is a person appointed to go into a company to take possession of a charged asset, realise the value of that charged asset and pay off the principal and interest due on debentures – a Receiver can be appointed by (1) the terms of the debenture or debenture trust deed for stated reasons, or (2) by the court exercising its inherent jurisdiction **(2.5 marks)**
- B. Powers of a Receiver: (1) the power to take possession of the charged property and sell the property at the best price, (2) the power to take over the management of the company for the duration of the receivership, (3) the power to borrow money, (4) the power to employ or dismiss employees, (5) the power to compromise debts, and (6) the power to carry on any other business of the company **(any 3 x 1.5 marks = 4.5 marks)**
- C. Reasons for the Removal of the Receiver by the Court: (1) on an application to the High Court where the company has gone into liquidation, (2) where the court considers that the removal is in the best interests of the creditors, and (3) where the Receiver has been guilty of misconduct **(3 x 1 mark = 3 marks)**

Solution to Question 7

- A. All power in the Irish State is vested in THREE different organs of state. List these THREE organs and define the role of each.

(4.5 marks)

- B. List any THREE fundamental human rights guaranteed protection by the Irish Constitution.

(1.5 marks)

- C. Outline the procedure for amending the Constitution.

(2.5 marks)

- D. List the THREE main sources of Irish law.

(1.5 marks)

Total 10 Marks

- A. Organs of State: (1) executive – government: this organ has the power to implement the laws passed by the Oireachtas (such as the police/prison service etc), (2) legislative – parliament: this power is held by the Oireachtas, who draft and vote on the laws to come into effect, (3) judicial – courts: this power enables the courts to interpret and apply the law correctly, in line with the constitution should a dispute arise **(3 x 1.5 marks = 4.5 marks)**
- B. Fundamental Human Rights: any of the following or others: (1) right to life, (2) equality, (3) privacy, (4) education, (5) family, (6) private ownership of property, (7) freedom of religion, (8) to vote, (9) freedom of expression, assembly and association etc **(any 3 x 0.5 marks = 1.5 marks)**
- C. Amending the Constitution: any amendment requires the consent of the people – this is done by a referendum voted on by the people – if the referendum is successfully passed the President of Ireland signs the amendment into Law – examples of recent referendums include the law on divorce, which was introduced by

a constitutional amendment in 1996, and more recently the ratification of the Lisbon Treaty **(2.5 marks)**

- D. Sources of Irish Law: (1) legislation (either primary or delegated), (2) case law (common law/equity), (3) EU law (either through EU Regulations or Directives passed in accordance with the Treaties) and (4) the Constitution (no laws can be passed in the state that violate the ethos of the Constitution) **(any 3 x 0.5 marks = 1.5 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 Thurles, County Tipperary. As this seminar was taking place over three days Alison booked herself into the Thurles 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 Thurles 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.

- List any FOUR categories of workers who are not eligible to sue for unfair dismissal. (**2 marks**)
- Discuss the nature of the duty imposed upon an employer to follow a set of fair procedures before dismissing an employee. In light of this discussion assess whether Simon’s employer treated him fairly in effecting his dismissal. (**6 marks**)
- 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. Ineligibility for Unfair Dismissal: (1) an employee with less than one year’s continuous service (except where dismissal results from maternity, trade union membership, or exerting the right to minimum wage), (2) persons not employed under a contract of service, (3) an employee who has reached normal retiring age, (4) an employee who is a member of the Defence Forces or the Garda Siochana, (5) a person who is employed by their family member in their home or on their farm, (6) persons employed at sea, (7) persons employed on a probationary period, (8) persons working illegally within the state, and (9) certain public servants (**any 4 x 0.5 marks = 2 marks**)
- B. Fair Procedures: the employer must (1) tell the employee of any allegations against him, (2) give the employee a copy of any evidence, (3) give the employee a right to respond and make representations, (4) allow the employee to bring a witness/representative to the disciplinary meeting, (5) give the employee the right to address a adjudicating body and make any pleas in mitigation Re Haughey (1971), and (6) give the employee a statement of the reasons for the dismissal - Redmond v Ryanair (2006) (**5 marks**) – conclusion that Simon’s employers have not employed fair procedures as there was no notification of the disciplinary meeting, he was not given a chance to defend himself, he was not allowed to bring a witness/representative etc (**1 mark**)

- C. 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 – maximum 2 years salary – minimum 4 week's salary – employee is expected to mitigate their losses **(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) – it has also been applied in cases such as Burke v John Paul & Co Ltd (1967) and Turner v Irish Rail (1996) **(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.
- B. The termination of a contract of agency by operation of the law.

(6 marks)
(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, or (c) by the doctrine of frustration – an unforeseen event which means that the agency agreement cannot be completed as agreed) **(4 marks)**

1st Examination: Autumn 2010

Law & Ethics (ROI)

Examiner's Report

Law & Ethics Autumn 2010 – Year 1 & 2

Following on from the disappointing Summer 2010 results, the Autumn 2010 results followed the same path, with an overall pass rate of 48.2%. The pass rate outside Dublin was 51% reflecting a pass rate for Dublin of 45.75%. The highest pass rate was Waterford at 75%.

Those students who failed to attain a pass mark and who plan on re-sitting this examination are advised to remember the following points when answering the exam questions:

1. Read the question carefully and only answer the question being asked.
2. Avoid a discussion of irrelevant issues – this will not gain you additional marks.
3. Always define the legal concepts, and include explanatory case law, where appropriate. Even if your application is not correct – you will still be awarded marks where you have explained the relevant concepts.
4. No marks will be awarded for citing legislation verbatim – where no attempt has been made to explain the application/contextual meaning of the provision.

Question 1:

Weak standard of answers – students lost marks as follows:

In Part A:

Some students were just discussing company law in general and not the provisions of the combined code. Others were completely confused between the code and Accounting Technicians Ireland's own code of ethics – and produced wholly incorrect answers.

In Part B:

Most students were able to list the sources of corporate governance – but some just listed the main sources of law, and lost some marks.

In Part C:

Some excellent answers re reckless trading – but some were abysmal. Some students were completely confused between fraudulent trading, insider trading, money laundering and reckless trading – and answered the question as if they were all the same thing.

Question 2:

- A. Some confusing answers in Part A with students (incorrectly) stating that partnerships must be registered with the CRO. The question related to members of partnership and merely required students to note the membership requirements.
- B. Most students mentioned active and sleeping/silent partners – but failed to mention the issue of liability. Quite a few scripts omitted reference to limited liability partners.
- C. Most students were able to outline the rights of partners – although some students were completely confused between rights and duties and incorrectly explained partnership duties.

Question 3:

- A. Most students were able to provide an adequate definition of a debenture.
- B. Students were confused between types of debentures (single, series and stocks) and the types of charges securing debentures (fixed/floating) and lost easy marks.
- C. A large portion of students were unable to correctly list the priority of payments upon company liquidation.

Question 4:

Most students scored below a pass mark in this question – students were obviously guessing answers without academic support, stating (incorrectly) that a Restriction Order restricts your involvement in the company.

Question 5:

Most students scored average marks in this question. Although in Part A it was obvious that some students were completely confused regarding the notification requirements vis-a-vis resolutions/meetings. There was also some confusion regarding the registration requirements with the CRO and the type of issues that are passed by various resolutions. A significant portion incorrectly stated that the removal of directors/auditors required a special resolution.

Full marks were attained by most candidates in Part B.

Question 6:

Most students produced an average/good standard of answer to this question – marks were lost where students confused the concepts of examinership and receivership and gave a plethora of different actions that would be classified as misconduct, for the purpose of removal of a Receiver.

Question 7:

- A. This portion of the question produced varying answers – with students incorrectly stating that the Dail, Seanad and President were the three main organs of state.

Others were confused between the role of the Parliament and the role of the government.

- B. Most students were able to list THREE fundamental rights.
- C. A large number of students were unaware that a referendum is required to amend the constitution.
- D. Most students were able to list THREE sources of Irish law – although some incorrectly stated the classifications of law and not the sources.

Question 8:

Good definitions of an exclusion clause – but a significant number of students were unable to explain TWO methods of incorporation of these clauses into the contract. Also weak application of the law to the facts with students often getting the correct answer – but for the wrong reason.

Question 9:

This question produced some very weak answers.

- A. In this section students were confused between eligibility to claim for unfair dismissal and the grounds that constitute a fair dismissal.
- B. Again in this section there was confusion between fair procedures to effect a dismissal and the grounds that constitute a fair dismissal.
- C. Most students correctly stated the remedies – although there was not always a clear distinction between reinstatement and re-engagement.

Question 10:

This question produced the weakest answers in the exam – with students unable to explain the concept of remoteness of damages and instead discussing the general principles of negligence, especially standard of care. The majority of students were completely unable to list five categories of damages – instead discussing what damages could be awarded for.

Question 11:

Well answered question especially Part A (duties of an agent) – some students lost marks in Part B because they discussed the general discharge of agency contracts and not discharge by operation of the law, as specifically asked.