



Accounting  
Technicians  
Ireland



**2<sup>nd</sup> Year Examination Summer 2009**

# **LAW & ETHICS (ROI)**

**PAPER, SOLUTIONS**

**and**

**EXAMINER'S REPORT**

## **NOTES TO USERS ABOUT THESE SOLUTIONS**

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**The solutions are relevant to the tax rates in the year the Examination was sat. A copy of the tax rates is enclosed with the solutions.**

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# 2<sup>nd</sup> Year Examination : Summer 2009

## PAPER : LAW & ETHICS (ROI)

Friday 22<sup>nd</sup> May 2009 - 9.30 a.m. to 12.30 p.m.

### INSTRUCTIONS TO CANDIDATES

Candidates may refer to the under-mentioned items of legislation in answering this paper.

*Republic of Ireland*

Companies Act, 1963  
Companies (Amendment) Act, 1977  
Companies (Amendment) Act, 1982  
Companies (Amendment) Act, 1983  
Companies (Amendment) Act, 1986  
Companies Act, 1990  
Companies (Amendment) Act, 1990  
Company Law Enforcement Act, 2001  
Companies (Auditing and Accounting ) Act 2003  
Investment Funds and Miscellaneous Provisions Act 2005/2006  
Companies Acts 1963 - 1990 by  
Horwath Bastow Charleton

*Republic of Ireland*

Partnership Act, 1890  
Limited Partnerships Act, 1907

The above items of legislation, and only those items, may be brought into the examination by candidates and used as reference material therein. Reference items must not contain any written notes or commentaries. Candidates will not be permitted to refer to any index published separately from the legislation.

Section A answer QUESTION 1 (COMPULSORY) and ANY THREE of the FOUR remaining questions. Section B answer ANY FOUR of the FIVE questions. If more than the required questions are answered in Section A and Section B, 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. However, 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 next page.

SECTION A

Answer Questions 1 (Compulsory) and ANY THREE of the four remaining questions

QUESTION 1 (Compulsory)

- (a) Wendy and Phillip have operated a catering partnership for the past five years, and have recently been awarded a very lucrative contract with the Department of Education to provide ready-made meals for in excess of 7,000 students across 120 schools in the West of Ireland. One of the conditions of the contract is that Wendy and Peter establish a limited company. Wendy and Peter are considering naming the company DEPARTMENT OF EDUCATION READY MEALS. Advise Wendy and Phillip on the limitations imposed upon the choice of company name under the Registration of Business Names Act 1963 and determine whether the name DEPARTMENT OF EDUCATION READY MEALS is capable of registration.

**8.5 Marks**

- (b) Wendy and Phillip's solicitor has advised them that to form the company they must register a Memorandum of Association, an Articles of Association and a Form A1 with the Companies Registration Office. They are aware of the content of both the Memorandum and Articles but are unaware of the content of Form A1. Outline to Wendy and Phillip the *four* pieces of information contained in Form A1.

**4 Marks**

**Total 12.5 Marks**

QUESTION 2

- (a) Define a Liquidator.

**2 Marks**

- (b) Outline any *six* duties of a company Liquidator.

**6 Marks**

- (c) List any *three* grounds upon which the Court can order the compulsory liquidation of a company.

**4.5 Marks**

**Total 12.5 Marks**

QUESTION 3

Max and Patrick are the two executive directors of PHOENIX PLC. In the last year Max has experienced some serious personal financial problems arising from the ill-health of his wife, and as a consequence he has borrowed €180,000 from PHOENIX PLC. to finance some of her medical treatment. When the non-executive directors of PHOENIX PLC. become aware of this loan they propose a resolution to remove Max for breach of his statutory duties.

Discuss the statutory duty imposed upon company directors regarding loans by virtue of the Companies Act 1990. Your answer should outline the rule, the permissible exceptions to the rule, the consequences for non-compliance, and the procedure that Max could have followed to ensure the legality of the loan.

**Total 12.5 Marks**

QUESTION 4

Discuss the content of the annual return (7.5 Marks) and comment on the importance of the Annual Return Date (ARD) and why it was introduced (5 Marks).

**Total 12.5 Marks**

**QUESTION 5**

Zara is a shareholder in ADELPHI ENTERPRISES Ltd. She has recently received notice of an extraordinary general meeting at which the directors propose to issue 500,000 €1 ordinary shares at €2. The directors state that they plan to allocate €500,000 to the capital account and the other €500,000 to the share premium account.

- (a) Discuss the function of the share premium account and explain the purposes for which monies in this account can be utilised.
- (b) Define the term "capital" and explain the distinction between 'authorised capital' and 'issued capital'.
- (c) Outline any *two* other grounds upon which the company can call an extraordinary general meeting.

**7 Marks**

**2.5 Marks**

**3 Marks**

**Total 12.5 Marks**

**SECTION B**

**Answer ANY FOUR of the FIVE questions in this Section**

**QUESTION 6**

In the context of European law discuss the main differences between European Regulations and European Directives.

**Total 12.5 Marks**

**QUESTION 7**

Rhonda is an avid collector of antique jewellery, especially pieces originating from the 1920's era. Recently, she walked past an antiques shop and saw a diamond 1920's brooch on display in the window, which had a price tag of €500. However, when she went into the shop to buy it the shop assistant refused to sell it to her for €500 and informed her that it was incorrectly priced and that the price was in fact €1,500. Rhonda refused to pay the €1,500 and left the shop really annoyed. She believes that the shop assistant should have sold her the brooch at the display price of €500.

The following week Rhonda saw an advertisement for an estate sale in her local newspaper. The advertisement stated that the estate had a number of jewellery items for sale, but that the most valuable piece was an antique bracelet that Prince Edward had given Wallace Simpson after he abdicated the English throne. The advertisement went on to say that the bracelet would be sold to the first person at the estate sale on the following Sunday morning who gave the estate manager €25,000 cash for the bracelet. As Rhonda wished to purchase the bracelet she queued for two days outside the gates of the estate. On the Sunday morning of the sale Rhonda was the first person who entered the estate and she instantly offered the estate manager €25,000 in cash for the bracelet. However, the estate manager informed her that he would not sell her the bracelet, as he had received an offer of €30,000 from another collector. Rhonda is outraged as she believes that the estate manager is obliged to sell her the bracelet for €25,000.

- (a) Discuss the distinction between an offer and an invitation to treat, with reference to appropriate case law. Based on this discussion determine whether the shop assistant was obliged to sell the brooch to Rhonda for €500 and whether the estate manager was obliged to sell the bracelet to her for the €25,000 cash.
- (b) List any *four* methods by which an offer can be terminated.

**10.5 Marks**

**2 Marks**

**Total 12.5 Marks**

**QUESTION 8**

MANGO CONSTRUCTION Ltd. has recently experienced a significant drop in its business and a consequence of this decline the company has decided that it will need to dismiss 25 of its 100 employees within the next six months. In this regard, advise the company in relation to the following matters:

- (a) The legal definition of redundancy. **2 Marks**
- (b) The eligibility requirements to receive redundancy. **2 Marks**
- (c) The possible selection criteria of employees for redundancy and what criteria would be deemed unfair. **5 Marks**
- (d) The amount of compensation payable.

**3.5 Marks**  
**Total 12.5 Marks**

**QUESTION 9**

George is employed as a production worker in a chemical manufacturing company. On last week there was an accident at the plant and a container of non-toxic chemicals was spilled onto the production floor. The company immediately notified all employees of the spillage over its intercom system and advised them to take extra care when passing through the area while the spillage was being cleaned up. George did not hear the warning as he was listening to his MP3 player while working, which is in breach of his employer's work rules. As he was passing through the area he slipped on some of the oil and injured his back. At the time of the accident George had been wearing his own shoes and not the required anti-slip rubber sole shoes that had been provided to him as part of his work uniform. George plans on suing his employer for his injuries.

- (a) Explain to George the main tests used by the Court to determine whether a duty of care exists between him and his employer in the context of the law of negligence. **6.5 Marks**
- (b) The chemical manufacturing company has admitted liability in respect of the chemical spillage but is claiming a defence of contributory negligence in relation to George's injuries. Discuss the defence of contributory negligence and assess the likelihood of George's claim being reduced based on his own contributory negligence.

**6 Marks**  
**Total 12.5 Marks**

**QUESTION 10**

- (a) Freddie has recently been appointed as the compulsory liquidator of GATSBY GARAGES Ltd. In the course of the liquidation Freddie discovers that one of the directors of the company removed substantial assets from the company and transferred them to a variety of different companies in which he and his wife were the sole shareholders. Freddie also discovered that the same company director also submitted a false version of the company accounts to the Bank six months prior to the liquidation in order to obtain a €50,000 loan. This money was never invested in the company and it appears to Freddie that the director used this money to buy his wife a luxury car. Freddie believes that this director is liable for fraudulent trading.

Discuss the offence of fraudulent trading, citing specific examples. Your answer should also comment on the penalties (both civil and criminal) where a company officer engages in fraudulent trading and determine whether the director's alleged actions amount to fraudulent trading.

**11 Marks**

- (b) Outline the ethical and legal reporting obligations imposed upon a company auditor where a suspicion of fraudulent trading arises.

**1.5 Marks**  
**Total 12.5 Marks**



## 2<sup>nd</sup> Year Examination : Summer 2009

# LAW & ETHICS (ROI)

## SOLUTIONS

- (a) **Company Names:** All company names must be registered under the Business Names Act 1963 - and a name is automatically disallowed if it is considered undesirable by the Minister for Enterprise, Trade & Employment (Section 21 CA63) - however, there is a possible appeal to the High Court where a name is refused registration - names considered undesirable:
- (1) offensive, immoral or blasphemous names,
  - (2) names suggesting a connection with any government department, local authority or State agency, where no such connection exists,
  - (3) a name that uses "bank, society, co-operative or insurance" in its name, unless it has obtained the appropriate permission from the Minister,
  - (4) a name that includes a registered trademark, without production of the consent of its owner,
  - (5) a name that it regarded as being misleading or confusingly similar to a registered name, or
  - (6) a name of an existing company - "*Department of Education Ready Meals*" - likely to be refused registration on the grounds that
    - (1) it includes a reference to a government authority (the Department of Education), and
    - (2) the word "limited" is omitted from the name .
- (b) **Form A1:** This form details
- (1) the first directors & secretaries of the company,
  - (2) the address of the company's registered office,
  - (3) a statutory declaration that the terms of the Companies Acts have been complied with, and
  - (4) a statement of issued capital.

**Solution to Question 2**

(a) **Liquidator:** This is a person appointed by the members, creditors or the Court to effect the dissolution of the company - dissolution requires the liquidator to sell the assets of the company, pay the debts of the company, compromise any outstanding claims and strike the company off the register.

(b) **Duties of a Liquidator:**

- (1) to take possession of the company's assets, including debtors for the purpose of sale - where the liquidator proposes to sell a non-cash asset to any person who was a Director in the last three years whose value exceeds €63,500 or 10% of the company's relevant assets, then the creditors must be notified in advance of the intended disposal (Section 231 CA 63),
- (2) to execute all necessary documents on the company's behalf, including bills of exchange, promissory notes or mortgages on the company's assets,
- (3) to arrange a list of creditors and contributors and seek monies due (the liquidator can also institute legal proceedings to recover monies due, where necessary),
- (4) to resolve all disputed claims and where necessary request the Court to adjudicate on them,
- (5) to bring or defend an action in the company's name,
- (6) to provide security for costs in the name of the company,
- (7) to apply the proceeds of the sale of company assets to the payment of the company's debts and liabilities in accordance with the rules governing the priority of payments,
- (8) where the asset realisation creates a shortfall the liquidator may make any compromise or arrangement with creditors,
- (9) if there is a surplus after asset realization, the liquidator must distribute any surplus amongst the shareholders in accordance with the provisions of the Companies Acts, and the company's Articles of Association,
- (10) to appoint agents to do such work that the liquidator himself is unable to do, and
- (11) he must call a meeting of creditors and company at the end of first year of liquidation, and on each successive year, within three months of the end of the year - to account for his actions - and he must send a copy of the accounts to the CRO - in effect the liquidator is obliged to do all things necessary for the orderly wind-up of the company,
- (12) following liquidation the liquidator must complete the various filing and notification requirements under the Companies Acts, including notification to the CRO to strike the company off the Register,
- (13) Section 55 CLEA 2001 provides that within 6 months of appointment the liquidator of an insolvent company must report to the Director of Corporate Enforcement on the conduct of the Company Directors for the purpose of determining whether restriction/disqualification (Section 150/160 CA 90) proceedings are justified - where they are justified the Liquidator is obliged to bring proceedings, unless excused by the ODCE.

(c) **Grounds for Compulsory Liquidation:**

- (1) the company has passed a resolution to liquidate,
- (2) the company is unable to pay its debts,
- (3) the company has failed to commence trading within 12 months of formation or has failed to trade in the last 12 months,
- (4) the company has failed to file an annual return for two consecutive years, and
- (5) the court considers it "just and equitable" to liquidate the business.

**Solution to Question 3**

**Loans to Directors:** Section 31 CA 90 - this section contains a prohibition against loans/quasi loans/credit transactions and guarantees from a company or its subsidiaries to a Director or any connected person - however there are some exceptions to this prohibition, including:

- (1) where the loan is less than 10% of the value of the company's assets (Section 32) or
- (2) intra-company transactions (Section 35), or
- (3) the advancing of money to a Director for reasonable business expenses (Section 36) - which must be vouched for within a reasonable time period, and
- (4) where the transaction is in the normal course of business - in regular trade terms (Section 37) - such as where the company is a bank or financial institution - breach of Section 31: contract is voidable (unless restitution is not possible) - the officer may be accountable for any personal gains - or he may be required to indemnify the company against losses - or if liquidation arises as a consequence of the unauthorised loan then he may be personally liable for the debts of the business - to ensure the legality of the loan Max should have ensured that:
  - (a) it was less than 10% of the value of the assets of the company,
  - (b) that a special resolution was passed by the shareholders, approving the loan,
  - (c) that a statutory declaration of solvency was completed by the Directors stating the loan would not impact the ability of the company to pay its debts - this declaration should also have been supported by a report of an independent person, and
  - (d) the company should have notified the CRO of the loan.

#### Solution to Question 4

**General information included in the annual return:**

- (1) the company address,
- (2) the location where the register of members is kept,
- (3) details pertaining to shares and company debt,
- (4) details of company members and their particular shareholdings, and
- (5) particulars of the Directors and Secretaries.

**Documents that must be annexed to the annual return:**

- (1) a copy of the balance sheet and profit & loss account,
- (2) a copy of the Directors Report, and
- (3) a copy of the Auditors Report.

Discussion that prior to 2001 the annual return had to be completed within 60 days of the AGM, signed by a Director and Secretary and forwarded to the Registrar of Companies - this caused difficulties as the CRO was unaware of when a company held its AGM - therefore they were often unaware of whether or not the company had missed the filing deadline - Section 60 CLEA 2001 introduced the Annual Return Date (ARD) - this is a readily ascertainable date on which a company's annual return must be submitted to the Registrar of Companies each year - all existing companies (as of 2001) were allocated an ARD - which was the anniversary of the date of the most recent annual return prior to the commencement of CLEA 2001 - all new companies were allocated an ARD six months after the date of incorporation of the company.

#### Solution to Question 5

- (a) **Share Premium Account:** where a company issues shares above their par nominal value (at a premium) the excess in value must be lodged into the share premium account - under Section 62 CA 63 the account can only be utilised as follows:
- (1) paying up un-issued shares for use in a bonus issue (a gift of shares to existing shareholders that converts the premium into share capital,
  - (2) to write off the preliminary expenses of the company (such as a promoters preliminary expenses),
  - (3) to write off the expenses, commission or discount relating to any issue of shares or debentures by the company, or
  - (4) the paying of any premium due on the redemption of redeemable shares/debentures.
- (b) **Capital:** this is the money raised through the issue of shares (share capital) or debentures (loan capital) by the company - and is used to run the company - authorised capital - this is the total amount of capital that can be issued by a company as stated in its memorandum of association - whereas issued capital is the total amount of capital issued by the company to date (stated in A1 at formation, stated thereafter in the annual return).
- (c) **Grounds to call an EGM:**
- (1) where compelled by the Court,
  - (2) where the auditor requires it to explain any financial irregularities or to announce a resignation,
  - (3) where a serious financial situation exists within the company (assets are less than the liabilities),
  - (4) where the shareholders request it,
  - (5) to liquidate the company,
  - (6) for any reason - at the absolute discretion of the directors.

### Solution to Question 6

EU laws can be enacted in two distinct forms, namely: EU Regulations and EU Directives.

**Regulation** - this is a piece of EU legislation that is binding in its entirety, and directly applicable on all the member states - the Regulation sets down a date for its implementation in the member states - and the member states need take no further legislative action - they are published in the Official Journal of the EU, and they enter into force on the date specified therein - it is not feasible for all EU laws to be enacted by means of a Regulation - as the social, economic, cultural, legal infrastructure etc of the member states are different, therefore in some instances enactment of a Directive is more appropriate.

**Directive** - this is a guideline/instruction to member states as to how they should standardise legislation in a particular area (given a particular timeframe in which to achieve this standardisation) - it is binding as to the result to be achieved - and is not directly applicable - the Directive gives the individual member states the choice as to the form and method of implementation - in Ireland Directives become part of Irish law through either an act of the Oireachtas (where it involves a substantive issue) or a statutory instrument (where it involves more of a technical issue) - the idea embodied in the Directive is enacted as legislation - but the exact particulars are at the discretion of the member states - examples include the Organisation of Working Time Act 1997, and the Minimum Wage Act 2000.

### Solution to Question 7

(a) **Offer and Invitation to Treat:** an offer is "*a clear and unambiguous statement of the terms and conditions under which the parties are willing to contract*" whereas an invitation to treat is merely an invitation (inducement) to make an offer - the distinction is important as the response to an offer may be acceptance or rejection whereas the response to an invitation to treat may be an offer - the distinction between an offer and invitation to treat is often made with reference to displays, quotations, brochures and catalogues et - which are generally deemed invitations to treat and not offers - in terms of advertisements most are classified as invitations to treat and not offers - however, in certain situations where a reasonable person would assume that the advertisement intended to make an order - the Court may classify the advertisement as an offer - in *Carlill v Carbolic Smoke Ball Company (1893)* the Court deemed an advertisement an offer as it was worded in such a way, and accompanied by an action that indicated intention, to qualify it as an offer - the same conclusion was reached in *Billings v Arnotts (1946)* - conclusion that the display of the brooch with the price tag attached was only an invitation to treat - an inducement to offer to buy - therefore the shop-keeper has no obligation to sell it for €500 - however, the advertisement of the bracelet for €25,000 is likely to be viewed as a unilateral offer - accepted by performance by Rhonda - based on cases such as *Carlill & Billings v Arnotts* - therefore a valid contract exists and the estate manager is obliged to sell the bracelet to Rhonda for €25,000.

(b) **Termination of an Offer:**

- (1) by rejection,
- (2) by revocation/withdrawal (at any time before it is accepted),
- (3) by lapse of time,
- (4) by counter-offer, and
- (5) by legal factors (such as death, bankruptcy, insanity/lunacy, incapacity and frustration).

**Solution to Question 8**

- (a) **Redundancy:** Definition of Redundancy: Section 7(2) of the Redundancy Payments Act 1967 defines redundancy as being a dismissal attributable wholly or mainly to:
- (1) the fact that the employer has ceased, or intends to cease, to carry on the business for the purposes of which the employee was employed by him or has ceased, or intends to cease, to carry on that business in the place where the employee was so employed, or
  - (2) the fact that the requirements of that business for employees to carry out work of a particular kind, or for employees to carry out work of a particular kind in the place where they were so employed have ceased or diminished or are expected to cease or diminish.
- (b) **Eligibility Requirements:** over 16, with a contract of service for at least 2 years after your 18<sup>th</sup> birthday.
- (c) **Selection Criteria:** employer must utilise an independent selection criteria, such as:
- (a) last in first out,
  - (b) skills required,
  - (c) productivity/performance - would be deemed unfair selection if the redundancy decision was based on discriminatory factors (Employment Equality Acts 1998-2004, as amended), such as
    - (1) gender,
    - (2) marital status,
    - (3) family status,
    - (4) religious belief,
    - (5) age,
    - (6) race,
    - (7) disability,
    - (8) sexual orientation,
    - (9) membership of the travelling community,
    - (10) trade union membership,
    - (11) pregnancy, or
    - (12) because an employee has exerted (or attempted to exert) their rights under protective legislation.
- (d) **Payments:** statutory redundancy payments amount to two weeks pay per every year of service, regardless of age, plus a bonus week - maximum ceiling of €600 per week - although an employer may provide a higher redundancy payment as a voluntary measure.

**Solution to Question 9**

- (a) **Duty of Care:** original test based on the decision of Lord Atkins in (*Donoghue v Stevenson (1932)*) - known as the "neighbour principle" - in effect you are liable for your negligent acts to your neighbour - a person so closely and directly connected to you that you should have them in mind as affected by your acts or your acts of omission (including words) - examples of where the relationship arises: solicitors/clients, doctors/patients, accountants/auditors/clients, employers/employees - expansion of the doctrine in recent years - now three-tier test:
- (1) was the harm reasonably foreseeable,
  - (2) was there a relationship of proximity between the parties, and
  - (3) considering the circumstances, is it fair, just and reasonable to impose a duty of care - conclusion that a duty of care exists between George and his employer.
- (b) **Defence of Contributory Negligence:** where a person contributes to their own injuries by failing to exercise reasonable care in relation to their own personal safety or the safety of their property - the Court views it as a breach of duty of care towards oneself - the defence is governed by the Civil Liability Act 1961 which allows for the apportionment of damages where contributory negligence arises, based on the degree of fault of the respective parties - the defence may also arise by a failure to mitigate damages, such as in *McGouran v Reynolds (1988)*, and in *Hamill v Oliver (1977)* - in allowing a defence of contributory negligence the Court will take into consideration the age & experience of the person - such as in *McKeever v Dundalk Line Company Ltd (1956)* - (conclusion that the Court is likely to allow the defence as George showed a lack of care for his own safety by wearing non-regulation shoes and listening to his MP3 player while working.

**Solution to Question 10**

- (a) **Fraudulent Trading:** definition under Section 297A CA 63 - as amended - elements of the offence: where a company officer "knowingly" and "intentionally" was a party to the fraudulent carrying on of the company's business, with the intent to defraud its creditors - the fraudulent act may be either a one-off or a continuous action to complete the offence - examples: *Re Hunting Lodges Ltd (1985)*, *Re Kelly's Carpetdrome Ltd (1983)*, *Re Aluminium Fabricators Ltd (1983)*, *Re Synnott (1996)* - siphoning-off company assets, using company assets for personal purposes, keeping two sets of books of account etc - criminal sanctions (on summary conviction imprisonment not exceeding 12 months &/or a fine - on conviction on indictment imprisonment not exceeding 7 years &/or a fine) - civil sanctions (personal liability for the debts of the business arising from the fraudulent act) - conclusion that the director is liable for fraudulent trading if Freddie's allegations/suspicions are correct.
- (b) **Reporting Obligations on the Auditor:** Section 194(4) CA 90 & Section 74 CLEA 2001 provides that where an Auditor comes to the opinion that a company or its officers or agents have committed an indictable offence (encompassing fraudulent trading) under the Companies Acts, he must notify the Director of Corporate Law Enforcement providing appropriate details.



## 2<sup>nd</sup> Year Examination : Summer 2009

# LAW & ETHICS (ROI)

## EXAMINER'S REPORT

Overall students performed well in this exam - with a significant percentage scoring in the higher brackets. My congratulations to all of the Colleges, Lecturers and Tutors whose hard work in delivering this module is to be applauded.

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:

Mixed standard of answers - students lost marks as follows:

#### In Part A:

1. Failure to mention that the name must be registered with the Department of Enterprise Trade & Employment and that a refusal can be appealed to the High Court.
2. Failure to elaborate on all of the grounds under which a name can be rejected - particularly one incorporating a trademark or one that is misleading.
3. Re application: failure to recognise that the name suggested excluded limited or plc.

#### In Part B:

1. There was confusion between the content of Form A1 and the Memorandum.
2. Students incorrectly included (1) the registration number (which is impossible - as this number is only granted after incorporation) and (2) the registration fee (this is not a piece of information but a payment).

### Question 2:

Well answered by the majority of students who attempted this question - with a significant number scoring full marks - where students tended to lose marks it was generally in part (c) - the grounds for compulsory liquidation - wherein students discussed insolvency but none of the other grounds. Others mentioned that the company can be liquidated due to the death/insanity of the directors/shareholders - this demonstrates a complete lack of understanding of the fact that the company is a distinct legal entity to the members.

**Question 3:**

This was an unpopular question - which produced some very weak answers. Students were generally unable to explain the rule that loans to company officers are prohibited, the four main exceptions, the consequences (particularly personal liability for losses caused as a consequence of the prohibited loan) and the procedure established under CLEA 2001 to ensure the legality of the loan transaction.

Some students discussed directors statutory duties in detail and not the actual question asked and accordingly, lost significant marks.

**Question 4:**

Most students scored well in this question - where marks were lost it was generally as a consequence of a failure to explain the content of the Annual Return - wherein some students only explained the documents attached to the return (others lost marks because they explained the content but excluded mention of the attachments). In addition re the importance of the ARD - some students incorrectly interpreted this question as the importance of the annual return - as opposed to the annual return date - and again lost marks.

**Question 5:**

Most students scored well in part (b) and (c) of this question (although in (b) some students were confused as to the distinction between authorised and issued capital - referring incorrectly to authorised as paid up capital and issued as unpaid capital). Par(a) was weak or omitted by some students who were unable to explain the meaning & purpose of the share premium account - this was clearly demonstrated when students discussed its use for business expenditure as opposed to capital expenditure. In addition, where students discussed its purpose - some stated that it is used for the redemption of shares and debentures - this is technically incorrect - it is used for the payment of the bonus on the redemption of shares or debentures - however, I only deducted a 0.5 mark for this error.

**Question 6:**

Most students produced a good standard of answers to this question - marks were lost where students stated that Regulations are immediately implemented (this is incorrect - they are given an implementation date) or failed to cite an example. Re Directives - marks were lost where no example was cited - and where no mention was made of the fact that they are implemented in Ireland through an Act of the Oireachtas or statutory instruments. Some students reversed the answer on the two and in this instance I awarded them 5-6 marks (depending upon the quality of the answer).

**Question 7:**

Mixed standard of answers to this question. In part(a) - marks were lost where:

1. Students failed to define an offer and an invitation to treat.
2. Students failed to include key case law to explain the distinction.
3. Students applied the law incorrectly to the two scenarios presented.
4. Some students applied the law re consumer information (which was not asked) as opposed to the law on offer/invitation to treat (which was specifically asked).

In part (b) marks were lost where students discussed the methods of terminating a contract and not the methods of terminating an offer as specifically asked.

**Question 8:**

Well answered by the majority of students who attempted this question - with a significant number scoring full marks - where students tended to lose marks it was as follows:

- B. Re eligibility; students incorrectly stated that you must be under 66 - this limitation was abolished in 2007 by the Exceptional Collective Redundancies & Related Matters Act - and therefore was not relevant. In addition, some students failed to mention that you must be over 16 - with 2 years employment after your 18th birthday. Others stated that you needed to be employed full-time - which is also incorrect - redundancy applies to all workers irrespective of hours worked or the seasonal nature of the work.
- C. Re selection criteria: most students knew the unfair selection criteria - but some were unaware of the fair criteria (as outlined in the pilot paper).
- D. Re compensation: most were correct - but some were totally incorrect stating that you were entitled to two years salary.

**Question 9:**

Answers were exceptionally poor across the board - and marks awarded were the lowest of any question answered. in **Part A** students were unable to discuss the test for duty of care (neighbour principle) and instead discussed the factors relevant in determining a breach of standard of care (in exceptional detail). Some also incorrectly discussed the tests for causation and remoteness.

In **Part B** - most applied the law re contributory negligence - but did not discuss the law (with case support) - 2 marks for application was a common mark for the entire of Question 9.

**Question 10:**

Again a poor standard of answers.

**Part A:**

1. Students were unable to define fraudulent trading and instead defined it as money laundering, insider dealing or a breach of directors duties.
2. Students were unable to give case examples of fraudulent trading.
3. Students failed to cite the relevant penalties.

**Part B:**

Students discussed auditors duties (not required) in depth - but a significant portion failed to mention their obligation to report indictable offences to the ODCE (some listed every possible body that they can report to - but excluded the ODCE).

