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## **Law and Ethics**

**Northern Ireland**  
1<sup>st</sup> Year Examination

**Autumn 2009**

**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.

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**Accounting Technicians Ireland**  
(Formerly The Institute of Accounting Technicians in Ireland)

**1<sup>st</sup> & 2<sup>nd</sup> Year Examination: Autumn 2009**

**LAW & ETHICS (NI) Students**

Friday 21<sup>st</sup> August 2009 - 9.30 a.m. to 12.30 p.m.

**INSTRUCTIONS TO CANDIDATES**

Candidates must indicate clearly whether they are answering the paper in accordance with the law and practice of Northern Ireland or the Republic of Ireland.

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

*Northern Ireland*

Partnership Act, 1890  
Limited Partnerships Act, 1907  
Insolvency (N. Ireland) Order, 1989  
Companies Act 2006

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 on Page 2 overleaf.

**SECTION A**

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

**QUESTION 1 (Compulsory Question)**

a) Callum and Kate have recently converted their business partnership into a private limited company. As a consequence of the conversion they have been informed by the Companies Registration Office that they will have to appoint an auditor to audit their company accounts. In this regard they seek your advice on the following matters:

1) The procedure for the appointment and removal of a company auditor.

**7.5 Marks**

2) List any THREE statutory rights of a company auditor under the Companies Act 2006.

**3 Marks**

b) Callum and Kate have also been advised that they may be eligible to apply for an audit exemption in the future. Advise them on any TWO conditions that must be satisfied in order for them to obtain an audit exemption.

**2 Marks**

**Total 12.5 Marks**

**QUESTION 2**

In the context of Debentures explain the main differences between a fixed charge and a floating charge and comment on which charge you consider to be the most secure.

**Total 12.5 Mark**

**QUESTION 3**

In the context of a company's annual general meeting (AGM) explain the following:

a) Who is required to hold an AGM under the Companies Act 2006?

**1 Mark**

b) When must a company hold its AGM?

**1 Mark**

c) The notice required to call an AGM and the details that must be included in this notice.

**3 Marks**

d) The general issues/business dealt with at the AGM.

**3 Marks**

e) The methods by which voting is effected at the AGM

**4.5 Marks**

**Total 12.5 Marks**

**P.T.O.→**

**QUESTION 4**

Apple Catering Ltd is experiencing some financial difficulty. The directors, Rob and Mick do not want the company to be wound up. They have been informed of an alternative procedure "Administration." Rob and Nick have never heard of Administration. In this regard explain to them:

- a) The purpose of Administration **1 Mark**
- b) Who can appoint an administrator with a court order and without a court order? When will the court grant an administration order? **5 Marks**
- c) The powers of the Administrator. **5 Marks**
- d) The advantages of Administration over Liquidation **1.5 Marks**

**Total 12.5 Marks**

**QUESTION 5**

Compare and contrast the characteristics of private limited companies and public limited companies operating in Northern Ireland.

**Total 12.5 Marks**

**P.T.O.→**

**SECTION B**

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

**QUESTION 6**

Describe the main differences between civil law and criminal law in Northern Ireland.

**Total 12.5 Marks**

**QUESTION 7**

Luke is a qualified accountant. On last month his flatmate Chris, who works as a freelance journalist asked him to review his financial accounts in order to assist him in declaring his taxable income to the Revenue. Luke completed Chris's accounts and filed all the appropriate documentation with the Revenue. On yesterday Luke presented Chris with a bill for £300 for his services. Chris is refusing to pay Luke and says that a friend should not charge another friend for doing him a personal favour. Determine whether or not Chris is obliged to pay Luke the £300 fee by discussing the law relating to intention to create legally binding relations.

**Total 12.5 Marks**

**QUESTION 8**

Jude has been employed as a make-up artist with an independent film company, Reality Productions, for the past five years. Her contract describes her as an independent contractor. Jude submits invoices on a monthly basis, which are paid without the deduction of tax or National Insurance by the film company. Jude is told what projects to work on by the film company and is usually given 24 hours notice by the company of which set she is required to work at on any given day. Jude is required to provide all her own make-up products and tools for use on the various film sets – but every month the film production company pays her £300 towards the costs of her materials. On last month they also paid for Jude to attend a course on make-up for special effect productions. Reality productions have also provided Jude with the use of a company car to assist her travelling to the various film locations.

On last week Jude was called to a meeting with a senior production manager and was informed that due to economic constraints her services were no longer required and that her contract was terminated with immediate effect and with no compensation. Jude is outraged as she believes that she is an employee of Reality Productions and therefore should be entitled to compensation.

- a) List THREE reasons outlining the importance of the distinction between an employee and independent contractor.
- 3 Marks**
- b) Outline any TWO tests used by the Courts to distinguish between a person employed under a contract of service and a contract for service (3.5 marks x 2).
- 7 Marks**
- c) Do you consider that Jude is entitled to compensation for the loss of her job? If so, how will her redundancy pay be calculated?

**2.5 Marks**  
**Total 12.5 Marks**

**QUESTION 9**

a) Define an agent and explain the various parties involved in a contract of agency.

**2 Marks**

b) In the context of the creation of agency, explain the following terms.

1) Agency by estoppel/ostensible authority.

**5 Marks**

2) Agency by ratification.

**5.5 Marks**

**Total 12.5 Marks**

**QUESTION 10**

a) Outline the composition of the Complaints Committee of the IATI.

**2 Marks**

b) List any FIVE rights of a member/student where a case is presented to the Disciplinary Tribunal.

**7.5 Marks**

c) Following a referral of a complaint by the Disciplinary Tribunal to the Appeals Committee state any THREE actions/decisions that the Appeals Committee can reach.

**3 Marks**

**Total 12.5 Marks**

# 1<sup>st</sup> & 2<sup>nd</sup> Year Examination: Autumn 2009

## Law and Ethics (NI)

### Solutions

#### Solution to Compulsory Question 1

- A.1) Appointment of the Auditor: Section 485 CA 2006 states that the first Auditor of the company is appointed by the Directors at any time before the first period for appointing an auditor and remains in office until the end of the first meeting at which the accounts are considered – thereafter the members may then appoint or reappoint an auditor at a meeting of the company’s members, or by written resolution, within 28 days of the directors sending the accounts of the members (**2 marks**) – if the members do not do so, the auditor remains in office and is deemed automatically reappointed unless: (1) the Auditor is the first auditor who was appointed by the directors and has not yet had their first appointment by the members, (2) the Articles require formal reappointment, (3) the members holding 5% of the voting rights serve notice that the auditor should not be reappointed, (4) a resolution has been passed to appoint another person as Auditor, (5) the directors have resolved that the next financial year the company will be exempt from audit (**any 4 = 4 marks**) – the Directors also have the capacity to appoint a person to act as Auditor to fill a casual vacancy arising during the year (**1 mark**) – if the members fail to make the appointment of an Auditor then the Secretary of State can make the appointment (**0.5 marks**)
- A.2) Statutory Rights of the Auditor: (1) to access all books, accounts and vouchers of the company (s.499(1)), (2) to ask questions/request explanations by the company’s officers, employees or any other relevant person, (3) to attend all general meetings of the company and to receive all notices of and communications relating to such meetings, (4) to speak and be heard at general meetings (s.502), and (5) to receive a copy of any written resolution proposed (**any 3 = 3 marks**)
- B. Audit Exemption Requirements: (1) turnover does not exceed £5.6m, (2) balance sheet total not more than £2.8 million for that year, (3) small company – with not more than 50 employees, (4) a company “dormant” since its foundation or since the last financial year, (5) it meets the above criteria and is not a public, bank or insurance company (ss.471-481 CA 2006), or (6) a company that is non-commercial, non-profit making and subject to audit by a public sector auditor (**any 2 = 2 marks**)

#### Solution to Question 2

- Debenture secured by a Fixed Charge: a company borrows money and secures that borrowing on a fixed asset – the charge attaches to a fixed asset from the moment of creation – thereafter the borrowing company cannot deal in the asset (sell, alter, use to create a further charge) without the consent of the charge-holder – this charge ranks in priority to other charges – it is usually created by means of either a legal or equitable mortgage (lender’s beneficial interest in the property is registered on the title documents/or the lender takes possession of the title documents until the debt is repaid) (**5 marks**)
- Debenture secured by a Floating Charge: a company borrows money and secures that borrowing on a non-specific company asset – the charge was defined in *Re Yorkshire Woolcombers Ltd* as a charge on an asset both present & future, which changes in the ordinary course of business and the company can deal with the charged asset during the normal course of business, until the charge crystallises – crystallisation can arise on default on the debenture, company liquidation, receivership, or the cessation of business – or alternatively on a pre-determined future date – upon crystallisation the floating charge becomes affixed to the charged asset over which it previously floated – this results in a transfer of equitable title from the company to the debenture holder – the priority of floating charge upon crystallisation is that it is only paid after the fixed charges and the preferential debts have been discharged (**6.5 marks**)

- Conclusion that a fixed charge is more secure as it has priority of payment, and the charge-holder is restricted in his dealing with the asset **(1 mark)**

### Solution to Question 3

- A. Only public companies are required to hold AGMs, private companies do not have to hold an AGM **(1 mark)**
- B. Public companies must hold it within six months of their year-end and not more than 15 months may elapse between meetings **(1 mark)**
- C. Notice of AGM: all shareholders must receive 21 days clear notice of the AGM **(1 mark)** – specifying that the meeting is an AGM, and the time, date and place of the meeting (Ss. 307-311 CA 2006) **(2 marks)**
- D. General business of the AGM: (1) consideration of the accounts, (2) consideration of the Director's and Auditor's reports, (3) declaration of a dividend, (4) retirement by rotation and re-election of Directors, and (5) re-appointment/appointment of the Auditor **(3 marks)**
- 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 – one vote may be given by each member present in person or by proxy – and a result is declared by the chairperson of the meeting – this declaration is deemed conclusive – the main disadvantages of voting by a show of hands is that (1) there is no privacy – everybody sees how you vote, (2) it does not reflect shareholdings (one hand regardless of how many shares you have), (3) it can be inaccurate (as no actual count is taken) – after a show of hands a poll can be demanded (secret ballot) by: (1) not less than five members (2) members representing not less than 10% of total voting rights (3) members holding shares that represent not less than one tenth of the paid up capital – the results of the poll take precedence over show of hands – poll voting depends upon number of shares held by the shareholder – the disadvantage of the poll is that it is more time consuming and administrative in nature – albeit more accurate – the right to conduct a poll cannot generally be excluded by the Articles – the poll vote may not happen immediately after and can be postponed to another date **(4.5 marks)**

### Solution to Question 4

- A. Compulsory/court ordered liquidation **(0.5 marks)**
- B. Distinction: in a members voluntary winding up the company is solvent i.e. there are sufficient company assets to pay the liabilities in full, so creditors will be paid and capital will be returned to the shareholders **(1 mark)** – whereas in a creditors winding up, the company is insolvent and liabilities cannot be paid in full – creditors may well not be paid some or all of the amount due to them by the company **(1 mark)**
- C. Main function of the liquidator is to ensure that the company's assets are got in, realised and distributed to the company's creditors and, if there is a surplus, to distribute it to the person's entitled to it **(2 marks)**
- D. Powers of a Liquidator: defined in The Insolvency (Northern Ireland) Order 1989 Part 1 Schedule 2 – with the sanction of the court or the committee of creditors, the liquidator can: (1) bring and defend actions on behalf of the company; (2) carry on the company's business to enable it to be wound up beneficially; (3) pay any class of creditors in full; (4) make any compromises with creditors, contributories or debtors – without sanction: (5) he can sell the company's property; (6) draw, accept and endorse bills of exchange in the company's name; (7) raise money on the security of assets and appoint an agent; (8) appoint a solicitor to assist him; (9) execute deeds; (10) prove in the bankruptcy or insolvency and do all such things necessary to wind up the company **(any 8 x 1 mark = 8 marks)**

**Solution to Question 5**

- Comparison: all companies, whether public or private have the following characteristics in common: (1) separate legal entity: a company is a separate legal entity from its members (it can contract in its own name/sue or be sued in its own name etc) – this also means that a company has perpetual existence and will only cease to exist where it is struck off the Companies Registry, (2) liability: all company shareholders have limited liability – on liquidation they are not required to make a contribution towards company debts where their shares are fully-paid, (3) formation: a company must be registered with the Companies Registry (through lodging a Memorandum of Association, an Articles of Association, and Forms 21 +23), (4) all companies are governed by the Companies Act 2006 and other relevant company law legislation – as a consequence there is a significant degree of formality involved in running the company, (5) publicity requirements – all companies have significant publicity obligations in return for separate legal existence – the degree of publicity depends on the size of the company and not whether it is public or private, and (6) management of the business: in a company the shareholders own the company but the directors are responsible for its management – therefore there is a theoretical distinction between ownership and management (**any 4 comparisons = 4 x 1.5 marks = 6 marks**)
- Contrast: (1) subscription: public company must have at least one member and two directors, a private company must have at least one member and one director, (2) capital: a public company must have a minimum capital of £50,000 – 25% of which must be fully paid, whereas a private company can trade without any statutory minimum or maximum share capital, (3) trading: upon receipt of the Certificate of incorporation a private company can commence trading – whereas a public company can only trade upon receipt of a trading certificate from the Registry (this document evidences everything about the company that makes it public), (4) a public company can sell its shares freely on the market or offer debentures to the public – whereas there is a prohibition against offering shares to the public in a private limited company, (5) public companies must hold an AGM, private companies do not, (6) a public company has 6 months from the end of its accounting period to produce statutory audited accounts – whereas a private company has 9 months (**any 4 x 1.5 marks = 6 marks**) – a private company must have limited or ltd after its name – a public company must have public limited company or plc after its name (**0.5 marks**)

**Solution to Question 6**

- Definitions: civil law is to uphold the individual right and thus is deemed to be private law – and it generally concerns disputes between individuals, where one person/company sues another person/company for a wrong – a civil claim is called an action and the parties are known as the claimant and the defendant – whereas purpose of criminal law is to protect society and maintain law and order and is thus deemed to be public law – which involves the state imposing codes of conduct and prosecuting an individual for breaching that code – a criminal case is called a prosecution and the parties are known as the prosecution and the defence (accused) (**2 marks**)
- Objectives – the main objective of civil law is compensation and ceasing the unwanted conduct – whereas criminal law's objective is punishment (as well as incapacitation, retribution, deterrence & rehabilitation) (**2 marks**)
- Tests – for a civil court to find a claimant liable the test is *the balance of probabilities*(by a judge) – for a criminal court to find a defendant guilty the test is *beyond all reasonable doubt* (by a jury) (**2 marks**)
- Commencement of proceedings – in civil law an action initiated by way of pleadings – in criminal law a prosecution is initiated by the State/Dept Public Prosecution (DPP) either through a summons or an indictment (**1 mark**)
- Representatives: The representative of the State in civil cases is the Attorney General – the representative of the State in criminal cases is the Director of Public Prosecutions (Public Prosecution Service) (**1 mark**)
- Remedies: the main civil remedies are damages, injunctions, court orders, an account for profits etc ... - whereas the main criminal remedies are fines, imprisonment, probation orders, community service orders etc ... (**2.5 marks**)
- Courts: There are different hierarchies of civil and criminal courts – the main civil courts are the Magistrates (few civil matters)/Small claims, County Court, High Court and Court of Appeal Courts – whereas the main criminal courts are the Magistrates Court, Crown Court, Court of Appeal and the House of Lords (**2 marks**)

**Solution to Question 7**

Luke is a qualified accountant. On last month his flatmate Chris, who works as a freelance journalist asked him to review his financial accounts in order to assist him in declaring his taxable income to the Revenue. Luke completed Chris's accounts and filed all the appropriate documentation with the Revenue. On yesterday Luke presented Chris with a bill for £300 for his services. Chris is refusing to pay Luke and says that a friend should not charge another friend for doing him a personal favour. Determine whether or not Chris is obliged to pay Luke the £300 fee by discussing the law relating to intention to create legally binding relations.

**Total 12.5 Marks**

- Introduction: the law on intention assumes a valid agreement (offer, acceptance, consideration and capacity) but concludes that an agreement is not legally binding unless intention is present – different presumptions regarding intention are made according to the type of contract created – although these presumptions can be rebutted (**1 mark**)
- Social Contracts – these are agreements between family members & friends – the presumption is on a lack of intention to create legally binding relations in these agreements – the law assumes that they are binding in honour only – this is because the law is reluctant to become involved in family disagreements – examples include: Balfour v Balfour (1919), Jones v Padvatton (1969) – however, extraneous factors may demonstrate an intention and rebut the presumption, such as in Merritt v Merritt (1969), Darke v Strout (2003), Simpkins v Pays (1955), Parker v Clarke (1960), the domestic relationship definition has been expanded to include relationships between friends included – Buckpitt v Oates (1968) etc (**4.5 marks**)
- Commercial Contracts – these are agreements where one or both of the contracting parties is a business/commercial entity – in these contracts the presumption of intention to create legally binding relations exists Esso v Commissioners of Customs – commercial contracts are even enforceable amongst family members – Snelling v John G. Snelling Limited (1973) – however, in rare circumstances intention can be rebutted – where extraneous factors may demonstrate a lack of intention – such as arose in, Rose & Frank Co. v Crompton (1925) Jones v Vernons Pools, Appleson v Littlewoods (4.5 marks)
- Conclusion: In our scenario although Luke and Chris are flatmates – they are acting in a commercial capacity – as an accountant and a freelance journalist – therefore the contract would be viewed as commercial and assumed legally binding – as there is no evidence to rebut this presumption – Luke can sue Chris for non-payment/breach of contract (**2.5 marks**)

**Solution to Question 8**

- A. Importance of the Distinction: (1) statutory protection is only afforded to employees not to independent contractors, (2) an employer is vicariously liable for the actions of employees but not generally independent contractors, (3) an employee has priority of payment over an independent contractor in the event of the liquidation of a company, (4) an employee may obtain social benefits (health insurance, pension, training, education etc) from an employer that are not accessible to a contractor, (5) the social welfare code distinguishes between an employee and a contractor for the purpose of benefits, and (6) the tax code distinguishes between an employee (PAYE) and a contractor (self-assessed) (**any 3 = 3 marks**)
- Tests: (1) Control Test: questions whether the employer controls all aspects of the employees work – in effect have they control over the work done, the method of completion, the means employed to achieve the result, and the time and place the task is to be done – the test by itself became unsatisfactory and unrealistic with the increase in the size of the modern workforce and the technical skills involved and so was replaced with the 'right to control' – this test too was unworkable and the courts designed further tests – in Mersey Docks & Harbour Board v Coggins & Griffiths (Liverpool) 1947- it was decided by the HOL that the Stevedores could not be treated as the employer of the driver as although they could instruct him they had no control over how he operated the crane - (2) Integration Test: (or Organisation Test) this test has also been used, particularly for professional people, where there is no right of control over the method of performance – it is based upon the concept that an employee is an integral part of the organisation, whereas a contractor performs work for the organisation but remains outside it – in the case of Cassidy v Ministry of Health (1951) a resident surgeon in a hospital was held to be an employee, so that the hospital was liable for his negligence - in Ferguson v John Dawson & Partners Ltd (1976) a labour – only subcontractor in the building industry was held to be an employee for occupational safety – this could be so even if he claimed to be self-employed for tax purposes – the court emphasised that it was more concerned with reality than labels – the control and integration tests are important but no longer decisive in determining whether a

person is an employee, (3) The Economic or Multiple Reality Test: This test is more likely to be used today. It brings into consideration such factors as the (1) right to engage, suspend and dismiss the worker, (2) the method of payment or holiday payment, (3) whether statutory deductions for tax and social security are made from wages, (4) whether hours of work are fixed, (5) whether the worker provides tools and equipment – the courts have recently established that an important factor in determining whether a worker is an employee or an independent contractor is the requirement to give personal service – if the worker is permitted to delegate the work to someone else rather than to perform the work personally, this is generally thought to be inconsistent with a contract of employment – in Ready Mixed Concrete (South East) v Ministry of Pensions & National Insurance (1968) the Judge held that a contract of service existed where: (1) there is an agreement from the worker that they will provide work for their master in exchange for remuneration, (2) the worker agrees either expressly or implicitly that their master can exercise control over their performance, (3) there are other factors included in the contract that make it consistent with a contract for service – in the case the fact that the drivers could appoint a replacement for themselves was a major factor in the decision that found them as contractors rather than employees, (4) Mutuality or obligation test: The requirement that there exists a legal obligation on both sides to provide work and to do work in order for a contract of employment to exist was put forward in O'Kelly v Trust House Fort (1993) – this test was used more recently in Carmichael v National Power (2000) (**any 2 tests x 3.5 marks = 7 marks**)

- C. Conclusion: by applying the tests Jude is likely to be classified as an employee (she is controlled (hours/place of work), integrated (training course), and shows a lack of entrepreneurship (she is reimbursed for expenses and cannot profit from the effective performance of her job) and therefore in reality will be viewed as an employee for the purpose of the law – and as a contractor for taxation purposes) – therefore she is entitled to redundancy for the loss of her job (**1.5 marks**) – the amount of payment is based upon her age and the amount of continuous service – age up to 21 years: half a week's pay per year of service: age 22-40: one week's pay per year of service: age 41 and above: one and a half weeks per year of service (**1 mark**)

### Solution to Question 9

A. An agent is a person who creates a contract on behalf of another person (**1 mark**) – the person the agent is representing is called the principal, and the person they create the contract with is called the third party – once the contract is created – the remaining contract that exists is between the principal and third party (**1 mark**)

B.1) Agency by Estoppel/Ostensible Authority: this is where the principal allows a third party to believe that the person is his agent – or where the actions of the principal have postulated this fact – this situation may arise where a person acted as agent in the past and continues to act as such after the agency relationship has been terminated – it may also arise by a course of dealing – such as in the case of employees, examples include: Panorama Developments (Guildford) Limited v Fidelis Furnishing Fabrics Limited (1971), Freeman & Lockyer v Buckhurst Park Properties (Mangal) Limited (1964) (**5 marks**)

- B .2) Agency by operation of law/ necessity – this is where a contract of agency is implied to exist in the event of extraordinary circumstances – in effect, where an emergency situation arises relating to the transportation of goods or where one person has possession of another's goods they may become an agent of necessity – for this to occur the following factors must exist: (1) the agent must be entrusted with the goods of the principal, (2) an emergency must arise, (3) the agent must attempt to contract the principal, & (4) the agent must be acting in good faith and in the best interest of the principal & to protect the principal's interest – in these circumstances the Court will imply that you are acting as an agent of necessity, examples include: Great Northern Railway v Swaffield, 1874, Sachs v Miklos (1948) (**5.5 marks**)

**Solution to Question 10**

- Composition of the Complaints Committee: Not less than 9 members, the majority of whom are not members of the IATI (**2 marks**)
- Rights of a Student/Member at the Disciplinary Tribunal: (1) to attend and be heard, (2) to be represented (by legal counsel or a member of the IATI), (3) to receive any material regarding the complaint from the IATI in advance of the hearing, (4) to cross-examine witnesses, (5) to adduce documentary evidence, (6) to call witnesses, and (7) to make any submission that they desire (**any 5 x 1.5 marks = 7.5 marks**)
- Actions of the Appeals Committee: (1) dismiss the complaint, (2) uphold the complaint, (3) confirm any sanction against the member decided by the Disciplinary Tribunal, or (4) vary the sanction by increasing/reducing its severity (**any 3 x 1 mark = 3 marks**)

# 1<sup>st</sup> & 2<sup>nd</sup> Year Examination: Autumn 2009

## Law and Ethics (NI)

### Examiner's Report

#### **Observations on Standard**

First and Second year candidates both sat the same script. The most noticeable differential on standard came not between the year groups, but between the questions answered. Some questions proved universally difficult and others provoked excellent answers across the board.

#### **Performance in Particular Questions**

##### **Question 1 (Compulsory Question)**

Most candidates were familiar with the procedure for the appointment and removal of a company auditor in response to A1. Answers to question A2 displayed a general unwillingness to answer the question set, with several candidates choosing to write generally about the role of an auditor, without addressing auditors' rights specifically. Part B was generally well answered.

##### **Question 2**

Again this question was generally well answered, with most candidates showing a real understanding of the main differences between fixed and floating charges, and were therefore able to reach sensible conclusions with regard to which is most secure. Indeed, there were some pleasing answers with quite satisfactory descriptions of the process of crystallisation.

##### **Question 3**

Single figures of candidates knew who is required to hold an AGM under the Companies Act 2006. Question 3 was divided into five parts and it was therefore possible for candidates to score highly even if they were unaware of the effect of the Companies Act 2006.

##### **Question 4**

A large number of candidates had an understanding of the purpose of administration and were able to make good suggestions with regard to the advantages of administration over liquidation. Part 4B which required knowledge of who can appoint an administrator with a court order and without a court order was less well answered.

##### **Question 5**

The best answers to this question approached the question in a systematic manner, addressing first the characteristics which private limited companies and public limited companies have in common, and then pointing out the characteristics peculiar to private limited companies and public limited companies. Most candidates were able to score well on this question, and those who scored less well appeared to overwhelm

themselves with the perceived invitation to ‘write all you know about private limited companies and public limited companies.’

**Question 6**

This question produced absolutely excellent answers. Even candidates who struggled elsewhere were able to obtain full marks here. Candidates clearly have a well defined and thorough understanding of the main differences between civil and criminal law as they operate in Northern Ireland.

**Question 7**

In the starkest of contrasts to question 6 this question was very poorly answered with even strong candidates earning very few marks here. Candidates either (or both) did not seem to understand what the question was requiring from them, or (and) did not have an understanding of the law relating to intention to create legally binding relations.

**Question 8**

On the whole question 8 was well answered with candidates understanding the importance of the distinction between an employee and independent contractor and the tests the courts use to draw this distinction. Candidates generally have an impressive ability to explain the manner in which redundancy pay is calculated.

**Question 9**

Agency as a basic concept is something with which the majority of candidates appeared familiar. Some candidates were also able to go on to describe agency by estoppel and by ratification with confidence, others were however apparently bewildered by the concepts.

**Question 10**

Few candidates were able to outline the composition of the Complaints Committee of Accounting Technicians Ireland in response to part A. However answers to parts B and C were far better.