
Law & Ethics
Republic of Ireland
1st Year Examination

May 2011

Paper, Solutions & Examiner's Report



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Accounting Technicians Ireland
1st Year Examination: Summer Paper 2011
Paper: LAW & ETHICS (ROI)

Friday 20th May 2011 - 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.

Cite any relevant authorities and/or statutory provisions to support your answers. Marks will be awarded for specific reference to sections of the Acts/Orders and decided cases. Answers should be illustrated with examples, where appropriate.

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

Cameron is an accountant operating as a sole practitioner. Eight months ago a client approached Cameron asking him to arrange a mortgage for him to purchase an investment property. The client gave Cameron €250,000 in cash and asked him to arrange a mortgage for €250,000, instructing him to pay a deposit of €25,000 now and to repay a further €225,000 to the mortgage company after the mortgage had been operative for six months. Cameron acted in accordance with the client's instructions. However, the mortgage company became suspicious when they received the cash payment of €225,000 and reported the client and Cameron to the Gardaí on suspicion of money laundering.

- a) Define the term money laundering. **1.5 Marks**
- b) Discuss the THREE elements of the offence of money laundering as established by the Criminal Justice Act 1994, as amended. **4.5 Marks**
- c) Explain the THREE processes by which money laundering can take place. **3 Marks**
- d) Outline any THREE necessary measures that an accountant and other designed bodies are required to undertake to counteract money laundering. **4.5 Marks**
- e) Discuss the sanctions/penalties that can be imposed where a person is found guilty of money laundering and of failing to report a suspicion of money laundering. **2.5 Marks**
- f) Discuss any other reporting obligations imposed upon auditors and accountants under company law. **2 Marks**
- g) Assess whether Cameron is guilty of a money laundering offence. Give reasons to support your answer. **2 Marks**

2 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

Alex and Jack have just graduated from catering college and are considering establishing an organic restaurant in Cork City. They have decided that the business should take the form of a partnership. As they know nothing about partnership law they seek your advice as follows:

- a) Outline the purpose of a Deed of Partnership and list any SIX terms that should be included in a Deed of Partnership.
- b) Explain the various methods by which a contract of partnership can be terminated/dissolved.

4 Marks

6 Marks

Total 10 Marks

QUESTION 3

Compare and contrast any FIVE of the characteristics of the shareholders and the debenture holders of a company.

Total 10 Marks

P.T.O.☐

QUESTION 4

Redford is a non-executive director of Canon Construction Ltd. He became a non-executive director of this company after working for over thirty years in the French construction sector. Six months ago, Redford attended a board meeting of Canon Construction Ltd despite the fact that he was suffering from the flu. Redford was taking medication for this flu and during the course of the meeting he fell asleep. He was awoken suddenly by the raised voices of two of the executive directors who were having a heated argument over whether the company should acquire a particular site for investment. The matter was immediately put to a vote and although Redford had not heard the arguments for and against the investment he voted in favour of it as the majority of directors were voting in this way. This investment has gone badly wrong and lost the company over €1 million. The shareholders are outraged at this loss and the director who was arguing against it has urged the shareholders to sue the directors for negligence. In particular, he has told them that they should sue Redford as he was asleep for almost the entire meeting at which this investment was being discussed.

- a) Define a director and explain the distinction between executive and non-executive directors. **5 Marks**
- b) Discuss the duty imposed upon directors to exercise reasonable skill and care in the management of the company and advise Redford whether he has breached this duty in the circumstances. **5 Marks**

Total 10 Marks

QUESTION 5

Richmond Web Design Ltd has recently been notified by their company accountant that as the turnover of the company is in excess of €10 million that they are no longer eligible for an audit exemption and will need to appoint an auditor. In this regard advise them as follows:

- a) Define the role of an auditor. **2 Marks**
- b) List any THREE persons automatically disqualified from acting as an auditor. **3 Marks**
- c) Explain any TWO duties owed by an auditor to the company. **4 Marks**
- d) List any TWO objectives of the Irish Auditing and Accounting Supervisory Authority (IAASA) in relation to the auditing and accounting profession. **1 Mark**

Total 10 Marks

QUESTION 6

Douglas Recruitment Consultants Ltd has just defaulted on a debenture secured on the entire assets of the company in favour of the Provincial Bank of Roscommon. The Bank has appointed Keith as Receiver to the company to recover the sums outstanding on foot of the loan. In this regard the shareholders of Douglas Recruitment Consultants Ltd have asked Keith to write them a memo explaining the following:

- a) Any FOUR grounds that would render a person ineligible to act as a Receiver. **2 Marks**
- b) Any TWO effects of the appointment of a Receiver. **2 Marks**
- c) Any THREE duties imposed upon a Receiver. **6 Marks**

Total 10 Marks

P.T.O.☐

SECTION C

Answer ANY FOUR of the FIVE questions in this Section

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

QUESTION 7

- a) Explain the distinction between primary legislation and delegated (secondary) legislation. **2 Marks**
- b) Outline and explain any THREE examples of the various forms that delegated legislation can take. **4.5 Marks**
- c) Discuss the relative advantages and disadvantages of delegated legislation. **3.5 Marks**
- Total 10 Marks**

QUESTION 8

- a) Define the concept of consideration. **2.5 Marks**
- b) Explain the distinction between executed and executory consideration, providing an example of each. **3 Marks**
- c) Last year Frank witnessed an accident at his local shopping centre in which his neighbour Betty fell and broke her hip on a spillage of coffee on the floor of *Coffee Delights* coffee house. Betty sued *Coffee Delights* for her injuries and asked Frank to act as a witness for her in this claim. Frank said that although he would be delighted to act as a witness he was concerned that if he had to take time off work to do this that he would not be paid for this absence. Betty promised to pay Frank €200 expenses if he agreed to act as her witness in court. Frank agreed to this and did act as her witness when the case came to trial. However, Betty is now refusing to pay Frank as her solicitor informed her that as he had subpoenaed Frank as a witness he was legally obliged to give evidence in court. Discuss the rule that *consideration must be more than what the party already has to do* and in light of this discussion determine whether Betty's promise to pay Frank the €200 is legally enforceable. **4.5 Marks**
- Total 10 Marks**

QUESTION 9

Valentine Publishing has been encountering a drop in sales in the last year as a consequence of the growth in popularity of electronic readers and e-books. The company is now considering making twenty of its 150 staff redundant. Of these twenty employee's Valentine Publishing has selected: (1) Sheila for redundancy, as she is suing the company for injuries arising from an occupational accident, (2) Robert, as he has recently been diagnosed with a learning disability that will require the company to purchase special software (costing €100) to allow him to do his job as an editor, and (3) Eleanor, as she is 62 years old and nearing retirement age.

- a) Discuss any THREE rights of an employee upon redundancy. **3 Marks**
- b) Outline the consultation requirements imposed upon companies considering collective redundancies, under the terms of the Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007. Comment also upon the penalties that can be imposed for non-compliance. **4 Marks**
- c) List any FOUR grounds that would amount to unfair selection on the grounds of redundancy and would facilitate a claim for unfair dismissal. State whether you consider Sheila's, Robert's or Eleanor's selection for redundancy fair or unfair in the circumstances. **3 Marks**
- Total 10 Marks**

QUESTION 10

Last week, Charlie dropped his car into Romford Motor Garage for its annual service. When he collected the car he noticed a problem with the brakes. He rang Romford Motors immediately and explained the problem to them. They told him to bring the car back to the garage and that they would look at it first thing the next morning. That same day he was returning home from work and had just turned onto his road when a neighbour's child kicked a ball that hit the windscreen of his car and completely shattered the glass. Charlie immediately hit the brakes but the car did not stop and skidded into a wall. The accident resulted in Charlie incurring two broken ribs, a crushed collarbone and a concussion. At the time of the accident Charlie was not wearing his seat belt.

- a) Define the concept of causation and explain the tests used by the Courts to determine causation in the case of a single cause of an injury and in the case of multiple causes. Based on this explanation advise Charlie as to who he should sue for his personal injuries and the damage to his car.

6 Marks

- b) Discuss the defence of contributory negligence and examine the impact of this defence on any claim made by Charlie.

4 Marks

Total 10 Marks

QUESTION 11

- a) Define a contract for the sale of goods, pursuant to the terms of the Sale of Goods Act 1893, as amended.

5 Marks

- b) Emma, a trainee accountant, recently visited her local electronics store for the purpose of buying a new net-book. She particularly liked the XS300 model and discussed in detail the features of this model with the salesperson. She decided to purchase this model for €350. However, after checking in the stock room the salesperson told her that they were out of stock of that particular model and that they would not be getting any more in. He then offered to sell her the display model of this net-book. When she inspected the display model she noticed a number of small scratches on the lid. The salesperson explained that these scratches were caused by normal wear and tear, and that he could offer her a discount of €50 on the price. She agreed to the purchase and was told by the salesperson that there would be no refund allowed on ex-display models. Two months after purchasing the net-book it stopped working. When she took it to her local repair centre, they inspected it and informed her that the operating system had crashed and that it was not repairable. Emma seeks your advice as to whether she is entitled to a remedy under the terms of the Sale of Goods legislation based on the net-books lack of merchantable quality. Advise Emma.

5 Marks

Total 10 Marks



1st Year Examination: May 2011

Law & Ethics (ROI)

Suggested Solutions

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

Solution to Question 1

- A. Money Laundering: money laundering is the way in which criminals attempt to turn cash and other assets obtained from criminal activities into genuine assets through the financial services system and through established businesses **(1.5 marks)**
- B. Elements of the offence: the offence is regulated in Ireland by the Criminal Justice Act 1994, as amended – according to Section 31 money laundering arises where a person: (1) conceals or disguises any property which, in whole or in part, directly or indirectly represents, the proceeds of drug trafficking or other criminal activity, (2) converts or transfers that property or removes it from the State (or provides advice or assistance in relation to conversion or transfer), for the purpose of avoiding prosecution for the offence or the making or enforcement of a confiscation order, or (3) handles any property (receives it, or undertakes or assists in its retention, removal, disposal or realisation – or arranges to do any of these things) knowing or believing or acting in reckless disregard as to whether that property is, in whole or in part, directly or indirectly representing another person’s proceeds of drug trafficking or other criminal activity **(4.5 marks)**
- C. Processes: the offence can be achieved by (1) placement: this is the initial disposal of the proceeds of criminal activity into an apparently legitimate business activity or property, (2) layering: this involves the transfer of money from business to business, or place to place in order to conceal its initial source, and (3) integration: this is the culmination of the previous procedures through which the money takes on the appearance of coming from a legitimate source **(3 marks)**
- D. Necessary Measures: (1) establishing the identity of customers on a continuing basis and for any transactions over €13,000 or in any situation where a person suspects that the service is connected with money laundering, (2) reporting of suspicious transactions to the Garda Síochána and the Revenue Commissioners, (3) implementation of procedures to prevent and detect money laundering activities, such as establishing adequate procedures of internal control and communication in order to forestall and prevent operations related to money laundering, and (4) the education and training of employees to ensure that they are aware of the provisions of the Act and of the Financial Services Regulator’s requirements in relation to money laundering **(any 3 x1.5 marks = 4.5 marks)**
- E. Sanctions: a person guilty of a money laundering offence is liable to imprisonment for a term not exceeding 14 years and/or a fine **(1.5 marks)** – a person found guilty of failure to report a suspicion of money laundering is liable to the imposition of a fine or a term of imprisonment of up to five years, or both **(1 mark)**
- F. Reporting obligations of 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 (such as money laundering, insider trading etc) under the Companies Acts, he must notify the Director of Corporate Law Enforcement providing details **(1 mark)** – if the auditor considers that the company has failed to keep proper books of accounts, the auditor is under an

obligation to inform the company of his findings and notify the CRO, who will then inform the Director of Corporate Enforcement **(1 mark)**

- G. Conclusion: it is likely that Cameron will be found guilty of money laundering – as he acted in reckless disregard as to whether he was concealing, disguising, converting or handling money acquired from criminal activity – in addition, even if was not acting in reckless regard as to the offence – he is also liable for failure to report what was obviously a suspicious transaction **(2 marks)**

Solution to Question 2

- A. Partnership Agreement: contract between the partners – outlining rights, duties and obligations **(1 mark)** – generally includes the following terms: (1) the nature of the firm’s business, the name of the firm and its principal place of business, (2) the capital and property of the firm and the proportion in which it is contributed by each partner, (3) the date of commencement and the intended duration of the partnership, (4) provision for the payment of salaries, if any, to the partners, (5) rights, obligations and duties of each individual partner i.e. the legal relationship between the different partners, (6) provision for audits and accounts, partner drawings, partnership meetings, (7) division of profits and losses, (8) the procedure to be adopted on the death, retirement or bankruptcy of a partner, (9) the procedure for the valuation of the goodwill and assets on the sale of the partnership or on the death of a partner, (10) provision for the dissolution of the partnership, (11) provision for the admission of an additional partner or the expulsion of an existing partner, (12) an arbitration clause setting down the procedure to be used in solving disputes **(any 6 x 0.5 marks = 3 marks)**
- B. Termination of a Partnership: this may arise in the following ways: (1) by operation of the law (Section 32-34 of the 1890 Act): (a) the passage of time, (b) attainment of objectives, (c) by retirement/notice of a partner, (d) by the death or bankruptcy of a partner, (e) by an intervening illegality that makes the continued existence of the firm illegal, **(2.5 marks)** (2) by an Order of the Court (Section 35 of the 1890 Act) – this may be granted due to the (a) permanent mental or physical incapacitation of a partner, (b) partner misconduct, (c) persistent breach of the partnership agreement, (d) where the partnership can only be carried on at a loss, or (e) where the Court considers at its absolute discretion that dissolution it “just and equitable” in the circumstances, **(2.5 marks)** and (3) by agreement – where the partners can unanimously agree to dissolve the partnership, even prior to any fixed date stated in a partnership agreement **(1 mark)**

Solution to Question 3

- Shareholders and the Debenture Holders: (1) role – shareholder is a member and creditor of a company, the debenture holder is a creditor of a company, (2) rights – shareholders as members have rights in relation to the company whereas debenture holders as creditors have rights against the company, (3) participation – shareholders are involved in the company as they have the right to attend meetings, and possess voting rights that can be exercised at these meetings (depending on the nature of the shares) whereas debenture holders have no role in the company and cannot attend company meetings or vote (although they may include a restrictive covenant in the debenture – limiting the rights of the company until the loan is repaid), (4) cost – shareholders cannot buy shares at a discount whereas debenture holders can purchase debentures below their nominal value i.e. at a discount, (5) capital growth – shareholders have a right to capital growth (if there is any surplus capital on liquidation) whereas debenture holders have no right to capital growth – they only have a right to repayment of the principal sum plus interest, (6) return – shareholders have a right to a dividend payment if the company is making a profit, and it is declared – if not the shareholders will receive no return whereas debenture holders have a right to repayment plus interest on the loan even if the company is making losses, and (7) risk – shareholders are the last to be paid on liquidation of a company so they carry a higher risk whereas the debenture holder’s debt is satisfied before shareholders so their financial investment is considered more secure **(any 5 x 2 marks = 10 marks)**

Solution to Question 4

- A. Executive Directors – Directors who are involved in the operational management of the business – they provide continuous attention to the affairs of the business – more often an employee – example, Managing Director – usually hold important positions within the day to day running of the business **(2 marks)** – Non-

Executive Directors – Directors appointed to manage the business on a transient basis – more involved in strategic management at board level, not involved in the operational running – appointed due to their expert knowledge, experience, attainment or skills – their role is to act as monitors of the executive directors (by ensuring that they are acting within their powers and the companies objectives) and to provide the board of directors with additional expertise and an objective view point **(3 marks)**

- B. Duty of Care and Skill: directors are required to exercise reasonable skill, care and diligence in the performance of their duties – the guidelines in relation to exercising this duty were laid out in *Re City Equitable Ltd (1925)* as follows: (1) the directors must exercise the duty to a standard reasonably expected from a person of his knowledge and experience, (2) the director is not bound to give continuous attention to the affairs of the company and need only attend meetings when he can reasonably do so or at least regularly, (3) the director can delegate the duties of the company to the management provided it is normal business practice and there are no suspicious circumstances, although the director still has a duty to supervise the discharge of the delegated function, as per *Re Barings Plc (No5) (2000)* – the test to determine liability is a subjective standard test and the court will examine what is reasonable for that particular director – the more qualified the director, the higher the standard will be expected from him – *Dorchester Finance Co Ltd v Stebbing (1977)* **(4 marks)** – conclusion that Redford has breached this duty – as he was brought into the company because of his expertise – and he failed to exercise this expertise when he voted in favour of this investment **(1 mark)**

Solution to Question 5

- A. Auditors Role: an auditor is an independent professional expert appointed by a company to prepare an independent report on the financial affairs of the company (audit the company), and to present this report to the shareholders at the annual general meeting **(2 marks)**
- B. Disqualified: (1) officers or servants of the company e.g. director or secretary, (2) relatives of a company officer e.g. spouse, brother, sister or child, (3) the partner of a company officer or another person in their employment, (4) a person who has been disqualified by the court, (5) a corporate body (although this is about to change as a consequence of an EU Regulation), and (6) an un-discharged bankrupt person **(any 3 x 1 mark = 3 marks)**
- C. Duties: (1) to investigate the financial affairs of the company – this requires the auditor to be alert to any wrongdoings by company officers, (2) to report to members (Section 163 CA 63) – this requires the auditor to report to the members on the accounts examined by them, and on every balance sheet, profit and loss account, and all group accounts laid before the company in general meetings during his/her term of office – the Auditor must state whether in his opinion the accounts reflect the company's true and fair financial position – the content of the auditor's report must be accurate, precise and unequivocal, (3) to report where a company fails to keep proper books of account (Section 74 CLEA 2001), (4) to report any suspicion that company officers have committed an indictable offence (Section 194(4) CA 90 & Section 74 CLEA 2001), (5) auditors are required to act with professional integrity (Section 193 CA 90) and act within the ethical and legal standards of the profession, (6) the auditor must comply with the obligations of the Finance Act (Section 172 Finance Act 1995) – this requires the auditor to report suspicions of taxation breaches to the Revenue Commissioners and to the company – and request rectification by the company, (7) the auditor is also obliged to act with due care and skill in the performance of his duties – this requires that the auditor does not perform his duties in a negligent manner **(any 2 x 2 marks = 4 marks)**
- D. Objectives of IASSA: (1) to supervise the accountancy bodies, (2) to promote high professional standards, (3) to monitor certain classes of companies, and (4) to advise the Minister for Trade, Enterprise and Innovation on auditing and accounting matters **(2 x 0.5 marks = 1 mark)**

Solution to Question 6

- A. Receiver Ineligibility: (1) a company, (2) an un-discharged bankrupt, (3) a person who has been an officer or servant of the company within the last twelve months, (4) the partner or employee of an officer of the company, or (5) a spouse, parent, brother, sister or child of an officer **(any 4 x 0.5 marks = 2 marks)**
- B. Effects of Appointment: (1) all floating charges crystallise, and become affixed to the assets/undertakings over which they were created, (2) the powers of the company and the Director's authority are suspended in relation to the assets affected by the Receivership, and can only be exercised with the consent of the Receiver, (3) where the Receiver is appointed as Receiver Manager, then he is entitled to carry on the business of the company, (4) the Receiver may, if he considers that the interests of the Debenture-Holder so require, dispose of any asset of the company affected by the Debenture, including the entire undertaking, (5) the Receiver is not liable on foot of contracts entered into by the company prior to his appointment (although these contracts remain binding on the company), unless he specifically agrees to be – *W&L Crowe Limited v ESB (1984)*, (6) the Receiver is personally liable for contracts entered into by him in the performance of his functions – although he may negotiate indemnification **(any 2 x 1 mark = 2 marks)**
- C. Duties of a Receiver: (1) duty to notify: the receiver has the duty to notify the company and the public of his appointment, (2) duty to exercise reasonable care in disposing of company assets: this requires the receiver to get the best possible price for the asset – in exercising this duty the receiver has the right, if necessary, to get independent advice, (3) duty to report: this is done via a statement

of affairs, which must be produced within 14 days of appointment, and should include particulars of the company's assets, debts and liabilities, the names and addresses of the company's creditors, the securities held by those creditors and the dates when the securities were respectively given – they must also report to the CRO every six months on the progress of the receivership, and in relation to the ODCE if he suspects that a past or present officer committed a criminal offence under the legislation, (4) duty to pay the company's debts in the correct order (a) the costs of receivership, (b) the fixed charges in the order that they were created, (c) the preferential debts, (d) the floating charges in the order they were created, (e) the unsecured creditors, and (f) the residue to the shareholders, and (5) duty to comply: the receiver must comply with any request from the Director of Corporate Enforcement to produce the receiver's books for examination **(any 3 x 2 marks = 6 marks)**

Solution to Question 7

- A. Distinction: primary legislation relates to laws enacted by the Oireachtas (Acts) – whereas delegated (secondary) legislation refers to laws passed by bodies (such as a government Minister or a public or local authority) other than the Oireachtas where the right to delegate legislation has been given to them under the terms of the primary legislation **(2 marks)**
- B. Forms of Delegated Legislation: (1) Orders: these are instructions, for example, an Order adding or removing a prohibited substance from the Misuse of Drugs Act 1977, as amended, (2) Rules: these establish guidelines in relation to practice and procedure, such as the Rules of the Superior Courts, (3) Statutory Instruments: these are laws enacted in give effect to a provision contained in a principal Act, for example, the smoking ban, introduced by the Minister for Health to give effect to the provisions of the Public Health (Tobacco) Act 2002, (4) Regulations: these are laws explaining provisions contained in legislation, such as the Maternity Protection (Protection of Mothers who are Breastfeeding) Regulations 2004, which explains the legal obligations imposed upon employers to provide accommodation for breastfeeding mothers returning to work, as established in the Maternity Protection (Amendment) Act 2004, (5) Bye-Laws: these are laws regulating a particular area or domain under the control of a relevant authority – such as bye-laws enacted by Dublin City Council, regulating the use of the Liffey boardwalk etc, and (6) Schemes: these are laws regulating the charging of fees **(any 3 x 1.5 marks = 4.5 marks)**
- C. Advantages/Disadvantages: advantages – (1) it enables the legislation to be passed (and if necessary changed at a later date) more quickly, by avoiding the sometimes slow and cumbersome process of the Oireachtas, and (2) its allows experts in the area of the legislation to be involved in making legislation – disadvantages: (1) it enables a large volume of complex legislation to exist in the one area of law, and (2) the lack of publicity surrounding the implementation of the delegated legislation means that the public can remain largely unaware of changes in law **(3.5 marks)**

Solution to Question 8

- A. Definition: discussion of the requirement relating to the presence of consideration in a contract to affirm its validity – consideration is based on the notion of *quid pro quo* (a favour for a favour), and on mutuality of obligation (you do something for me and I'll do something for you) – in most contracts it is the price you pay for a promise etc – to be valid the consideration must be real and genuine, it cannot be vague (idea of prayers), uncertain or illegal **(2.5 marks)**
- B. Executory/Executed consideration: executed consideration can be defined as a promise in return for an action or a thing – for example, if you give me that coffee I will give you €3 whereas executory consideration can be defined as 'a promise in return for a promise' – this means that the parties exchange promises to perform acts *in the future* – for example, a shopkeeper promises to deliver goods and customer promises to pay for them when they arrive **(3 marks)**
- C. Consideration must be more than what the party already has to do: a promise to perform an act that you are legally or contractually obliged to do anyway, will not constitute sufficient consideration for any new agreement – Collins v Godfrey (1831) – this rule relates to requests for further payment in addition to what was already agreed under a contract, Stilk v Myrick (1809) which can be contrasted with Hartley v Ponsonby (1857) – or where an officer of the state attempts to collect a reward for completing his legal duty **(3.5 marks)** – in this scenario as Frank was subpoenaed to act as a witness for Betty in his claim against *Coffee Delights* therefore Betty's promise to pay Frank the €200 is not legally enforceable **(1 mark)**

Solution to Question 9

- A. Rights of an Employee upon Redundancy: (1) right to a redundancy 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, (2) right to statutory minimum notice: this is a minimum entitlement of two weeks' notice of dismissal by redundancy – the actual notice will also be subject to legislation and the terms of the contract, (3) right to time off during notice period: this is to look for new employment, attend interviews or training courses **(3 x 1 mark = 3 marks)**
- B. Consultation Obligations: there is also a statutory obligation upon an employer who plans to undertake collective redundancies (more than 10% of the workforce) to consult the trade union or if there is no trade union, the elected body of employee representatives at least 30 days in advance of

making the first redundancy – the purpose of the consultation is to look at methods of reducing or avoiding the necessity for redundancies – there is also a statutory obligation for the employer to give written notice to the Minister for Enterprise, Trade and Innovation **(2.5 marks)** – failure to comply is treated as a criminal offence and the employer is liable on indictment to a fine of up to €250,000, the Court may also award a protective award (which can be up to a maximum of 90 days' pay for every employee) against the employer **(1.5 marks)**

- C. Unfair Selection: grounds include selection based on (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, (12) where the employee has taken legal action against the company or (12) because an employee has exerted (or attempted to exert) their rights under protective legislation (including minimum pay) **(any 4 = 2 marks)** – conclusion that if Sheila is selected on the grounds of legal action, if Robert is selected on the grounds of disability or if Eleanor is selected due to age then the selection will be viewed as unfair in the circumstances **(1 mark)**

Solution to Question 10

- A. Causation: to succeed in a negligence action the plaintiff must be able to prove that the defendant's act or omission caused the loss or damage to the plaintiff – the key test to determine causation is the "But for Test" – question asked in the negative and if the answer is in the negative, then causation is established – problems with this test where there is more than one cause of an injury – such as arose in *Barrett v Chelsea & Kensington Hospital Management Committee (1969)* where the cause of death was arsenic poisoning and the failure of the hospital to treat him – resulted in the development of a second test – where there is more than one cause of an injury – this is known as the material element and substantial factor test, *McGhee v National Coal Board (1973)* **(5 marks)** – conclusion that Charlie can sue both Romford Motor Garage and his neighbour for his injuries as they were both concurrent wrongdoers and materially contributed to Charlie's injuries **(1 mark)**
- 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 *Jones v Livox Quarries (1952)*, and in *Froom v Butcher (1976)* – in allowing a defence of contributory negligence the Court will take into consideration the age and experience of the person, as well as the actions of a reasonable person – such as in *Hegarty v Donegal County Council (1998)* and *O'Reilly v Iarnrod Eireann (2002)* **(3.5 marks)** – conclusion that the Court is likely to allow the defence as Charlie contributed to his injuries by not wearing a seat belt at the time of the incident **(0.5 marks)**

Solution to Question 11

- A. Sale of Goods: Section 1(1) SGA 1893 – a contract in which a seller transfers or agrees to transfer ownership of goods to a buyer “for a money consideration called the price” **(0.5 marks)** – 3 elements: (1) transfer of property in goods (excludes land, shares or a contract for services) – the term “goods” covers all chattels personal, including existing, future, specific and unascertained goods **(1.5 marks)** – (2) the contract must be for a sale – a transfer of goods by way of a pledge, mortgage or loan (or consumer credit contracts) is precluded under the Act, as are gifts **(1.5 marks)** – (3) the goods to be sold must be given a price tag or a price – may include a trade-in situation provided it involves a price tag on the new item or a specific allowance for the traded-in item – exception under *Flynn v Macken (1974)* – an agreement to provide goods against trading stamps or other tokens, or the transfer of goods in exchange for the performance of services or in exchange for the payment of the debt are not classified as sales **(1.5 marks)**
- B. Merchantable Quality: Section 14 – merchantable quality: as durable as one can expect – taking account of price, description and all other relevant circumstances (time of sale, changing standards) – *Egan v McSweeney (1956)* – not merchantable quality where the performance of the product is prejudiced and the defect cannot be easily remedied or repaired without expense or taking some time to perform – exceptions, defects brought to the attention of the buyer before contract is made, defects obvious to a reasonable person, *Grant v Australian Knitting Mills (1936)* – doctrine of *caveat emptor (4 marks)* – conclusion that Emma can exert her rights under the legislation as the defects brought to her attention had nothing to do with the net-books operating system – and it is illegal to exclude the terms of the Act in consumer contracts – therefore Emma is entitled to a remedy **(1 mark)**

1st Year Examination: May 2011

Law & Ethics (ROI)

Examiner's Report

Overall the performance of students was good – with approximately 2/3's of candidates attaining a pass mark (and a significant portion attaining over 70, with one candidate scoring a 99). Students performed significantly better in the company law (Section B) component of the paper – with the majority producing weaker answers in Section C. There were huge gaps in knowledge especially in Questions 10 and 11, with students discussing completely irrelevant issues and not the questions being asked.

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. Do only what you are asked – list means only list and does not require any discussion, explain or discuss means that you must make some attempt to elaborate on the concept/rule.
3. Avoid a discussion of irrelevant issues – this will not gain you additional marks.
4. 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. Where you cannot remember the name of a case – state in a past case and explain the scenario. Where you cannot remember a case put in an example.
5. 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 (Compulsory Question)

- A. This section was well answered and the majority of students attained full marks for any reasonable definition of money laundering. Students lost marks where they identified money laundering as either fraudulent trading or insider trading.
- B. This section was poorly answered and a large portion of students could not discuss the elements of (1) concealing or disguising, (2) converting or transferring, and (3) handling money/goods related to the proceeds of criminal activity. Marks were awarded for discussions relating to (1) tipping-off and (2) failing to report – as these activities are also part of the offence.
- C. This section was well answered and the majority of students attained full marks for an explanation of the processes of layering, placing and integrating the proceeds of criminal activity.
- D. This section produced a mixed standard of answers – with some students unable to identify three measures to counteract money laundering. In addition, naming three different people/bodies that money laundering must be reporting to – did not constitute three separate things (only one) – a reporting obligation of suspicious activity is only one measure.
- E. This section produced a mixed standard of answers – with some students failing to recognise that the sanction for (1) money laundering, and (2) failing to report a suspicion of money laundering were two separate things. Some answers incorrectly discussed the sanctions for insider trading.

F. This section produced some confusing answers – with students discussing to whom money laundering should be reported – and not the other reporting obligations imposed upon auditors (in addition to money laundering). The two other main reporting obligations are (1) suspicions of indictable offences, and (2) failure to keep proper books of account – although where students mentioned two specific offences, such as fraudulent and reckless trading, or insider dealing, full marks were awarded.

G. Although the majority of students identified that Cameron was guilty of money laundering by failing to report a suspicious transaction, there were also some surprisingly incorrect answers – which stated that as he was only acting on his client’s instructions and made no personal gain that

he could not be guilty. This is quite worrying – as students may be placed in a situation where they have to decide where or not to report such a transaction.

Question 2

A. Most students attained full marks in this section and easily defined the purpose and terms likely to be included in a Deed of Partnership. Some incorrect answers discussed partner’s duties and not the terms of the Deed.

B. Mixed standard of answers – with students using their knowledge of how contracts are brought to an end to answer this section – as opposed to specifically discussing how contracts of partnership are brought to an end by (1) agreement, (2) the courts, and (3) the operation of the law. On average 3-4 marks were awarded for discussing the law in relation to the discharge of all general contracts in the context of the question.

Question 3

Unpopular question – but one in which a significant portion of students attained full marks. Marks were awarded more generously where students undertook a true comparison (especially through the use of a table) – whereas where students included a paragraph on the characteristics of shares and another on debentures, without any real attempt at a compare and contrast, marks tended to be lower.

Question 4

A. This section was well answered and the only time marks were lost was where students failed to address both components of the section – (1) a definition of a director, and (2) the distinction between an executive and non-executive director.

B. This section was badly answered – with students discussing the scenario from the perspective of a breach of statutory and fiduciary duties – and not from the perspective of a breach of the duty of care and skill, as specifically asked. Where students discussed the three elements of this duty as established in *Re City Equitable Ltd (1925)* full marks were awarded.

Question 5

A. Well answered by the majority – who in general were awarded full marks.

B.

C. Again, this section was generally well answered – although incorrect answers included (1) a restricted person, and (2) a person convicted of an indictable offence.

D. This section was also well answered and most students could explain two duties – with a large portion again referring to his reporting obligations *vis-a-vis* a suspicion of money laundering.

E. Abysmally answered section – which thankfully was only awarded 1 mark. Students should be aware that IAASA does not supervise accountants – but rather that it supervises the accountancy bodies.

Question 6

- A. Well answered by the majority – who in general were awarded full marks. As in Question 5(b) incorrect answers included (1) a restricted person, and (2) a person convicted of an indictable offence.
- B. Again, this section was generally well answered – although some students seemed to confuse effects with (1) powers and (2) duties.
- C. The majority of students attained full marks in this section – students losing marks referred to powers and not duties of a Receiver.

Some students confused the role of the Receiver with the Examiner or Liquidator, and accordingly, lost significant marks in this question.

Question 7

A minor portion of students lost all the marks in this question as instead of discussing primary and secondary legislation, they discussed primary and secondary sources of EU law. Sources and legislation are completely different things – and this is a significant error to make. In addition, a miniscule number of students answered this question by discussing the law of precedent. I cannot reconcile where this confusion came from.

- A. The majority of students attained full marks in this section.
- B. The section was also well answered – with the majority of students being able to list three forms of delegated legislation – and the majority mentioning the smoking ban.
- C. The majority of students attained almost full marks in this section – advantages were excellent – there was some confusion regarding disadvantages – a good answer could have mentioned either: (1) bulk, (2) accountability or (3) lack of awareness.

Question 8

- A. The majority of students could provide a reasonable definition of consideration.
- B. The majority of students could provide a reasonable distinction between executed and executory consideration.

However, in some scripts it was obvious that students had no clue as to the meaning of the concept – and instead stated that it was about being considerate of other people when drafting contracts!

- C. Although most students correctly stated that there was no legal obligation on Betty to pay Frank to attend Court as he had a legal obligation to attend as a consequence of the subpoena – the theory to support this conclusion was weak. A significant number of students could not adequately explain the concept of performance of an existing contractual/legal obligation, supported by case law or a relevant example.

Incorrect answers also discussed past consideration, and the rule regarding sufficiency and adequacy.

Question 9

- A. This section was well answered by the majority – although incorrect answers discussed rights in relation to unfair dismissal and not redundancy – as asked.
- B. A weaker standard of answers was generated by this component – who although they were cognisant of relevant selection criteria – could not explain the consultation obligations and consequent penalties.
- C. Most students could list four grounds for unfair selection – but then shockingly they applied the law incorrectly and stated that Eleanor’s selection was fair as she was nearing retirement age anyway – despite the fact that the majority stated that age was a ground for unfair selection. I cannot reconcile this disparity as students were contradicting themselves!

Question 10

In general this question (and the next) were the worst answered questions on the paper.

- A. The majority of students could not explain the tests for causation and instead discussed the tests for (1) duty of care, (2) breach of duty and (3) remoteness. A table outlining each of the tests has been added to the manual to make this area easier to understand and hopefully to clearly delineate the various tests.
- B. There was a slightly better standard of answers in Part B – but some confusion between the defence of contributory negligence and voluntary assumption of risk. Full marks were awarded for definitions, a discussion that it can lead to the apportionment of damages, and a case/example. Some students incorrectly stated that the defences meant that Charlie could not sue at all – others failed to recognise that by not wearing a seat belt he contributed to his own injuries.

Question 11

- A. Abysmal Part A – with students unable to define a sale of goods contract – and instead discussing the terms implied by the legislation.
- B. A slightly better B – but some answered failed to explain the concept of merchantable quality and instead discussed the exclusion clause. Also, incorrect application – just because she accepted an ex-display model does not mean that she cannot exert her rights in relation to the lack of merchantable quality in relation to the operating system – these are two completely different things.