



The Association of Taxation Technicians

NOVEMBER 2004 EXAMINATION

PRINCIPLES OF LAW

EXAMINER'S REPORT

Question 1

A question which should have required very little revision, as candidates should have known about money laundering issues from the training they received in general practice. However, a worryingly large proportion of candidates apparently did not know the requirements, although those who did know the requirements scored high marks.

Question 2

Most candidates answered this well, however, a number tried to apply the terms of the will despite concluding that the will was invalid.

Question 3

This was a popular question attempted by most students.

Part 1 - This was answered well, although no candidate scored full marks.

Part 2 - This was an easy question to gain marks on and most candidates did well. It is disappointing that a large number of candidates lost easy marks by failing to provide answers in the appropriate letter format. Marks were allocated to the opening and ending e.g. Dear Sirs/Yours faithfully or Dear Harrison and Noah/Yours sincerely. A mark was also given for a conclusion i.e. some advice to Harrison and Noah as to whether they should incorporate and few did this. Candidates need to be reminded that they should not use their names or addresses in letters because a large number of them did.

Question 4

This was also a question answered by most students.

Part 1 - This was answered well, although not many mentioned certainty.

Part 2 - This was an easy part to gain marks on and most did.

Part 3 - This was either answered very well with many candidates getting full marks.

Unfortunately a number of candidates appeared to misread the question, losing the opportunity to score higher marks, and in some cases employment law slipped into the answer and resulted in some candidates scoring nothing.

Part 4 - No candidate scored well on this part. A large number did not even attempt it, but still scored well overall.

Question 5

Candidates who remembered and understood the three key phrases of 'constructive dismissal', 'wrongful dismissal' and 'unfair dismissal' did well in this question. It is a confusing area of law and as a result many got the fact that the former two are contract law issues and the latter is statutory, muddled up.

Many candidates also focused too much on the fact that Julie is the managing director's niece, several suggesting that Jamie should sue for 'favouritism'.

Another subtle but important point that many missed is that when Jamie left the office never to return, he was not breaching his contract, because it had already been breached by his

employers when they changed his contract illegally. Therefore if an employment tribunal (often wrongly called 'industrial tribunal' by most candidates) agreed that Able Estates had breached Jamie's contract, then Able could not argue successfully that Jamie had breached it by walking out.

Question 6

Part 1) was generally reasonably well answered. Nearly all candidates remembered that public companies can sell shares, that they are freely transferable and that they have to have a minimum allotted share capital of which a quarter has to be paid up. However there are clearly several myths that need to be dispelled:

One was that private companies do not need to have their accounts audited, rather than pointing out that there are turnover thresholds that determine this.

A second is that private companies are always small.

A third is that one of the differences is that a public company's shares are owned by members of the public, whereas a private company's shares are owned by private individuals.

Finally, the suggestion that the shares of a private company are always owned by family and friends.

Part 2) was usually either well answered if the candidate remembered the four key points or very badly answered if they didn't.

Part 3) also had a few myths that need to be ended. Candidates mostly focused on the tax reasons of why a group structure may develop, even though the question asked for commercial reasons first. This was a good test of candidates' ability to actually understand what they have learned, rather than just reproducing it. As a result, most candidates suggested that a group would be cheaper to run than the alternative, which in most cases would be a single company. This makes no sense at all. Even though a group can make a single VAT return, make sales within the group without incurring VAT and setting one part of the group's profits against losses in another part, this is not cheaper than being a single company. Not everything that a company does is to save money; commercial, geographical and regulatory considerations come first. Having said all this, many candidates did remember the point about regulatory issues meaning that overseas jurisdictions often require local subsidiaries and that certain types of companies, such as those in insurance, also need to be discrete. Many also pointed out that risky ventures are often best carried out by newly incorporated subsidiaries to protect the assets of the holding company, but few mentioned that the effect of limited liability may be reduced by guarantees given by the parent. Surprisingly, bearing in mind that many candidates work within the accountancy profession, few pointed out that the more companies there are in the group, the higher the auditing costs.

Finally, though it is recognised that this examination is not a test of candidates' written English, the great difficulty this examiner had in trying to understand what many meant both because of difficulty in reading poor handwriting or understanding the meaning they were trying to impart did count against many candidates. It would be appreciated and to everyone's advantage if candidates could realise that they would do just as well if not better if they answered questions by writing neatly and in a series of bullet points or short paragraphs. Long rambling, nonsensical paragraphs written in impenetrable handwriting in which candidates adopted their own version of grammar and frequently contradicted themselves did them no favours and ultimately lost them valuable marks.