



Association of Taxation Technicians

Examination

May 2005

PRINCIPLES OF LAW

TIME ALLOWED - 1 HOUR 30 MINUTES

Candidates should answer **four** out of six questions set.

Each question carries 25 marks.

Start each answer on a fresh sheet.

All workings should be shown and made to the nearest month and pound unless the question requires otherwise.

Marks are specifically allocated for good presentation.

Candidates who answer in accordance with Scots law or Northern Ireland law should tick the appropriate box on the front of the answer folder.

There are alternative requirements in Question 3 for Scots law candidates.

1. You are consulted by Bill and Ben, who are shareholders in a company called Barney Trading Ltd. Bill holds 10% of the shares and Ben holds 16% of the shares. The balance of shares is held by Ted, who is the father of the two directors Andrew and Adrian, both of whom draw a salary.

The company's Annual General Meeting is due to be held in two months time and Ted has tabled a resolution to change the company's objects from general trading to property investment.

Bill and Ben have also learnt that a few months ago Adrian sold his holiday cottage in Hastings to the Company for £140,000. Bill and Ben are very unhappy about this as they were not consulted in any way and, had they been, they would have objected.

You are required to write a letter of advice to Bill and Ben. Your advice should concentrate on the following:

- 1) Is it possible for Ted to change the company's objects and can Bill and Ben do anything to prevent that happening? (9)**
- 2) Whether Adrian has acted properly or not in selling his cottage to the company. (6)**
- 3) Explain to Bill and Ben whether there is any mechanism to remove Adrian and Andrew as directors and, if so, if it is likely to succeed. (10)**

Total (25)

2. "As a general principle, where partners have a liability to outsiders, they have joint and several liability."

- 1) You are required to explain the duration of liability for partners and the categories of creditor who may pursue a claim against a retired partner. (6)**
- 2) You are required to explain the extent of the liability of partners and whether it can be limited in any way. (4)**

"The Partnership Act 1890 applies in the absence of contrary provisions in the partnership agreement, but it imposes some terms which may be inappropriate to a business, so that a well-advised firm would ensure that specific terms are agreed."

- 3) You are required to list the essential terms that you would expect to see in a partnership agreement. (10)**

"On dissolution a partner can insist on realisation of the firm's assets, payment of the firm's debts and distribution of the surplus."

- 4) You are required to explain how dissolution of a partnership occurs. (5)**

Total (25)

3. Fred won the lottery last year and now fancies himself as "landed gentry". He now has the following assets:
- 1) "Manor House"- a house in 20 acres of land, which he owns jointly with his wife, Wilma.
 - 2) "Garden House"- a small cottage in the grounds of Manor House, which he has let to his friend, Barney.
 - 3) A patent over an invention developed by Fred, which will, he thinks, revolutionise vehicle impulsion, cutting down vehicle emissions and increase fuel efficiency.
 - 4) A lease over a barn adjoining the land he owns, in which he keeps a tractor and prototype vehicles for his invention.
 - 5) His tractor.
 - 6) Some fine antique furniture and paintings.
 - 7) A (somewhat rundown) castle in Scotland. Fred has obtained a loan secured over the castle to pay for the renovations to the it.

You are required to:

- 1) **In the case of each of the assets referred to at points 1 to 7 above, explain how the asset would be classified in accordance with English property law. (6)**
- 2) **It is not known whether Fred and Wilma own the Manor House as joint tenants or tenants in common. Explain the difference between the two. (12)**
- 3) **With reference to legal and equitable rights only, explain what interest Fred has in the castle and how would this alter if Fred had declared the castle as being held in Trust for his daughter Bam Bam? (3)**
- 4) **Explain whether English or Scots law would apply to the castle and the loan and why? (4)**

Total (25)

Scots law candidates are required to:

- 1) ***In the case of each of the assets referred to at points 1 to 7 above, explain how the asset would be classified in accordance with Scottish property law. (6)***
- 2) ***Assuming Fred and Wilma own Manor House in common, explain the main features of this type of ownership. (12)***
- 3) ***Explain the main differences between ownership in common and joint ownership. (3)***
- 4) ***Explain the legal formalities of creating a trust in which the truster is also a trustee. In the event that Fred places the castle in trust for his daughter with Fred as trustee, how would this change his legal interest in the castle? (4)***

4. In order for a contract to come into existence, there must be an offer and an acceptance. Once the contract has come into existence, it imposes obligations on the parties to that contract.

You are required to explain:

- 1) **The circumstances in which an offer that has been properly made can be terminated (i.e. can no longer be accepted).** (12)
- 2) **The remedies that are available to an injured party where a contract has not been properly performed.** (8)
- 3) **The circumstances in which a contract could be held to be illegal or contrary to public policy.** (5)

5. Fiona has recently started working for Susan in her shop. Susan has given Fiona written particulars of her employment, as required by law but has not given her a formal written contract setting out any further terms.

You are required to explain:

- 1) **What terms will be implied, by law, into any contract of employment in the absence of any specific terms both generally and in relation to notice periods?** (7)
- 2) **When may a claim for unfair dismissal be brought?** (6)
- 3) **What constitutes a dismissal, for claims for unfair dismissal?** (4)
- 4) **What awards may be made for claims for unfair dismissal, and how are they calculated? (You do not need to provide calculations, but are asked to provide an explanation of the principles applied in calculating awards.)** (8)

Total (25)

6. **You are required to:**

- 1) **Explain the terms tax avoidance and tax evasion, highlighting the differences.** (5)
- 2) **Explain the elements of a crime.** (4)
- 3) **List and briefly explain the specific criminal offences of which a tax practitioner or client may be guilty of committing.** (12)
- 4) **Explain the four main categories of offence for which the Inland Revenue have indicated they consider criminal prosecutions are appropriate.** (4)

Total (25)