



Association of Taxation Technicians

Examination

November 2006

PRINCIPLES OF LAW

SOLUTIONS
(without marking guide)

Answer 1

(a)

A PR may be an executor or an administrator	
Where a person leaves a valid will	
That appoints PRs	
Those PRs are called executors who distribute the estate in accordance with the terms of the will	
Where a person dies intestate	
Or with a valid will but without executors able and willing to act	
Then the Administration of Estates Act 1925	
Determines who is to act as PRs and the persons so appointed are called administrators	
They distribute the estate in accordance with the will if there is one	
Or under the terms of the Administration of Estates Act if there is not	
The primary duties of PRs are to:-	
Determine the assets	
And liabilities of the estate	
Obtain probate	
Or letters of administration	
Collect in the assets	
And pay the liabilities of the deceased	
Deal with the Inland Revenue	
And pay any tax liability	
And then distribute the estate in accordance with the will	
Or the intestacy rules	

(b)

A gift to a beneficiary under a will is called a legacy	
Legacies may be classified as follows:-	
Specific legacies	
are gifts of a specific part	
Of a deceased's estate which must be distinguishable from the rest of the estate	
For example " my gold and opal ring"	
General legacies	
Are legacies which do not refer to the deceased's own property	
This could include a gift of money	
Which would be called a pecuniary legacy	
Or a gift such as "a horse for Mary" when the deceased did not own a horse	
Which instructs the executors to purchase a horse for Mary	
Demonstrative legacies	
Are gifts of money payable out of a specific part of the deceased's estate	
For example " I leave james £700 payable out of my holding of shares in ICI plc."	

Answer 2

To: A Manager From: A Candidate RE: James Dissolution of Partnership and Partnership Agreements Date: 1.11.06	
<u>Dissolution of Partnership</u>	
A partnership may be dissolved in the following ways:-	
(1) By effluxion of time	
If the partnership is entered into for a fixed term	
(2) by termination of the venture	
If the partnership was entered into for a single venture	
(3) by the death	
Or bankruptcy of a partner	
(4) by notice given by a partner	
Items 3 and 4 above apply unless the partnership agreement provides otherwise	
(5) by subsequent illegality	
That is, an event occurs which makes it unlawful to continue the business	
(6) by order of the court	
For example, on the permanent incapacity of a partner	
Or on just and reasonable grounds	
<u>Partnership Agreement</u>	
The Partnership Act 1890	
Applies in the absence of contrary terms in the partnership agreement	
But it is helpful to have a written record of the terms specifically agreed so that they are relevant to your business	
And minimise the risk of dispute in the future over terms	
The agreement should cover the following areas:-	
(1) The firm's name	
Place of business	
And nature of the firm's business	
(2) The date on which the partnership is to commence	
And its duration	
(3) the proportions in which capital is to be provided	
And whether interest is to be paid on capital before profits are divided	
(4) the way in which profits are to be shared	
And provisions for partners' drawings	
(5) meetings of partners	
And the management of the business	
(6) restrictions on the activities of partners	
For example, other businesses in which the partners may not engage	
(7) admission of new partners	
And retirement and expulsion of partners	
(8) death of a partner	
(9) the keeping of books and records	
And provisions dealing with taxation	
(10) an indemnity for each partner against liabilities incurred in the ordinary and proper course of business	
(11) dispute resolution- how disputes between the partners will be	

resolved	
This is usually by mediation, arbitration or through the Courts	
I hope this is helpful but if you need any further information then please let me know	
A candidate	

Answer 3

5. Money Laundering

1 Money laundering is the process by which proceeds of crime are converted into assets which appear to have a legitimate origin, so that they can be retained permanently or recycled into further criminal enterprises

2 The regulations state that no person in the course of a relevant financial business (which from 1 March 2004 includes the tax profession) shall form a business relationship or carry out a single transaction with or for another person unless they maintain record keeping and identification procedures., make employees aware of procedures and enactments relating to money laundering, and train employees in that respect. The regulations require professionals to appoint a money laundering reporting officer, who should report suspicions and knowledge of money laundering to the National Criminal Intelligence Service (NCIS). There is no de minimis limit and professionals have to report all suspicious and knowledge of criminal activity irrespective of the level of proceeds or the gravity of the crime.

The regulations provide guidance as to the extent of knowledge or suspicious required. Suspicious is defined as requiring a degree of satisfaction, not necessarily amounting to belief, but extending beyond speculation as to whether an event has occurred or not. There is no requirement to perform additional work in order to investigate the suspicion. The test is objective: would a reasonable person have known or suspected an offence had taken place?

3 The Proceeds of Crime Act 2002 details offences in relation to money laundering. In relation to professionals this includes the offence of failure to disclose which occurs where:

- i) a person knows or suspects or has reasonable grounds for knowing or suspecting that another person is engaged in money laundering .
- ii) Information on which that knowledge or suspicion is based or which gives reasonable grounds for such knowledge or suspicion came to him in the course of a regulated activity and
- iii) the individual does not make the disclosure as soon as practical after the information comes to him.

An offence is not committed if the person has a reasonable excuse

for not disclosing the information or where he is a professional legal adviser and the information came to him in privileged circumstances . There is also a defence if the individual does not know or suspect that another person is engaged in money laundering and he has not been provided with the relevant training by his employer.

Many professional firms have a dedicated money laundering officer to whom issues should be reported by the individual and who will make the relevant disclosure to the authorities.

Data Protection

4. The Data Protection Act 1998 establishes a system of registration for and supervision of data users and computer bureaux to ensure that personal data is used in accordance with the data protection principles. The principles include:

the information to be contained in personal data must be obtained and processed fairly and lawfully;

personal data must only be held for specified purposes and must only be used for those purposes;

personal data held for a specified purpose must be adequate, relevant and not excessive in relation to that purpose;

personal data must be accurate and where necessary kept up to date and must not be kept for longer than is necessary;

data must be stored confidentially and securely and there must be systems in place to confirm what data is held about a person if asked; and

an individual is entitled to be informed by any data user whether data is held in relation to that individual, to access the data and to have that data corrected or erased.

Answer 4

1. Precedent – hierarchy of the courts in England and Wales

The decision of a court establishes a precedent which must be applied by a lower court or, generally, by a court of equal standing in any similar case unless and until it is overruled. A judgement can generally only be overruled by a higher court or by legislation.

i) The Supreme Court

Decisions of the Supreme Court are binding on all lower courts.

The Supreme Court, previously the House of Lords, used to consider that it was bound by its own previous decisions. However, in 1966 the House of Lords stated that rigid adherence to the principle of precedent might lead to injustice in some case and unduly restrict the development of law. Now the Supreme Court departs from its

own decisions where it appears right to do so. Sparing use has been made of this power.

The Supreme Court may also overrule decisions of lower courts.

ii) The Court of Appeal

The Court of Appeal is bound by the decisions of the Supreme Court. The Court of Appeal may overrule decisions of lower courts and its decisions bind all lower courts. It is generally bound by its own previous decisions.

iii) The High Court and Crown Court

The High Court and Crown Court are bound by decisions of the Supreme Court and the Court of Appeal and generally by their own previous decisions.

iv) Inferior courts and tribunals

The county and magistrates' courts are inferior courts. They are bound by decisions of the higher courts, but their own decisions are not binding, that is, they do not form binding precedent (mainly because they are not reported).

The same rules apply to tribunals, such as the Special Commissioners and the VAT and duties tribunals, although their decisions are reported. Decisions of the General Commissioners are not reported.

Precedent – hierarchy of the courts in Scotland

Once again, a decision of a court establishes a precedent to be followed until overruled.

(i) *The Supreme Court*

The position is as described above

(ii) *The Court of Session*

The Court of Session in its appellate capacity is bound by decisions of the House of Lords delivered in Scottish appeals as well as bound by its own previous appellate decisions. Decisions in English cases are not binding but persuasive. The Court of Session as a court of first instance is in the same position. A judge is not bound by other decisions of a single judge but "will accord them respect".

(iii) *The High Court of Justiciary*

As a court of criminal appeal, the High Court is bound by its own precedents but a precedent set by the court can be overruled by a larger bench of appeal judges. As a court of first instance, the rule is that a judge sitting alone is bound by previous decisions of the court.

(iv) *The sheriff court*

the sheriff court is bound by the precedents of each of the higher courts.

2. Flexibility and precedents from other legal systems

Once established binding precedent must be followed. This may prove inconvenient, or unfair, if a bad precedent has been established. There are ways in which courts may not be bound.

a) *Precedents overruled*

A precedent may be overruled either by statute, by the Supreme Court or by a higher court. Also a precedent may, in limited circumstances, be overruled by a court of the same standing. If it is overruled by a higher court, the earlier rule of law is deemed never to have existed. This is part of the declaratory theory of the law. The law is never changed, it is merely restated correctly. It does not mean that earlier cases which have been concluded will be reopened, but cases which are not concluded when the law is restated are affected by the restatement.

Judicial overruling therefore operated retrospectively, so the courts do not overrule earlier precedents unless there is good reason. Overruling must be distinguished from reversing a decision, which is the term used when a decision is altered on appeal: for example, a decision of the High Court may be reversed on appeal by the Court of Appeal.

b) *Distinguishing*

A court can avoid following a decision which apparently applies to the case in hand, but of which it disapproves, by distinguishing the precedent from the case in hand. Distinguishing is a process whereby a court finds that the material facts of the two cases involved differ, so that this precedent need not be followed.

c) *Decisions made in other legal systems*

As a general matter, the decision of a court in one common law jurisdiction is persuasive in another. This means that the judge is not bound to follow the case but must give it due consideration. Hence, the decision of an English court is persuasive in Scotland or Northern Ireland and vice versa. Equally, a New Zealand decision may be persuasive in England.

In tax cases a decision of an English court is highly persuasive in Scotland but, unless it is a decision of the Supreme Court, it is not considered binding. Care must always be taken when looking at a case from another UK jurisdiction to see whether the decision is one a point of law peculiar to the other jurisdiction.

3. Aids to the interpretation of statutes

i) *Intrinsic aids*

Intrinsic are found within the statute itself:

- 2) The long and short title, the preamble, schedules, definitions and interpretation sections are part of the enactment and may be used to resolve an ambiguity in the operative part of the Act. However, they are not allowed to restrict a clear meaning.
- 3) Punctuation and marginal notes should not be relied on as guides, because they are inserted at the draftsman's discretion and are not subject to parliamentary debate.

ii) *Extrinsic aids*

Extrinsic aids are found outside the Act.

- 1) This Act gives definitions of certain words and phrases which are commonly encountered in statutes and generally applies to all Act unless a special definition is given in the relevant Act or a contrary intention appears. For example, unless the context so requires, the masculine includes the feminine and vice versa, the singular includes the plural and vice versa. These are only presumptions, not rules of law, and can be excluded by contrary intention, express or implied. In Northern Ireland the Act is the Interpretation Act (North Ireland) 1954.

- 2) Judicial precedents of interpretation

The doctrine of precedent applies to the interpretation of statutes. The decision of one court on the interpretation of a statute may be binding on another court.

- 3) Dictionaries

Words in statutes are presumed to bear their ordinary and natural meaning and it is legitimate to consult a dictionary to determine the meaning of words which have no particular legal meaning.

- 4) Reports of committees

Reports of Law Commissions, the Law Reform Committee and similar bodies are legitimate aids to discovering the state of pre-existing law and the mischief which the statute was passed to remedy.

- 5) Reports of proceedings in Parliament (Hansard)

A report of proceedings in Parliament is prepared daily and this records verbatim the debates which have occurred and proceedings in committee. For years the courts were forbidden to take account of the reports in Hansard to assist in interpreting statutes, but the House of Lords changed the rule in 1992.

Answer 5

1.	Evan has an equitable (i.e. beneficial) interest in the property by virtue of the effort and money he put into the renovation	
	As a beneficiary he is therefore entitled to a share in the sale proceeds	
	Evan also has an Overriding interest by virtue of his actual occupation of the property	

2.	A purchaser is only deemed to know about equitable interests if they are Registered (in this case the interest is not registered)	
	BUT the rights of a beneficiary can only be overreached on a sale if the purchase monies are paid to two trustees or a trust corporation	
	In which case the beneficiary's rights attach to the proceeds of sale	
	And the buyer takes the land free from the beneficiary's rights	
	As the interest is unregistered and he has no notice of it AND the purchase monies are paid to two trustees (i.e. Mr & Mrs Bloom) Mr Brown will be able to overreach Evan's beneficial interest	
	BUT Evan still has an overriding interest by virtue of his actual occupation of the property which will bind Mr Brown	

3.	As contracts have been exchanged Mr & Mrs Bloom are obliged to sell on the Completion date set out in the contract	
	Mr Brown can therefore sue Mr & Mrs Bloom for any loss (damages)	
	The aim of damages is to put the injured party into the position he would have been in if the contract had been properly performed	
	Damages would be difficult to assess and as such Mr Brown may also apply to the court for an order of specific enforcement	
	This is an equitable remedy where the court orders the defendant to carry out the contract	
	Like other equitable remedies this is at the discretion of the court	
	Unlike damages it is not available as of right	

Answer 6

1.	In order to incorporate a company certain documents need to be delivered to the Registrar of Companies and a fee to be paid.	
	One or more subscribers must sign an agreed Memorandum, which sets out the objects of the company	
	The subscribers must also sign the Articles of Association	
	It is also possible for a company to be bought off the shelf which effectively means that company is ready made and the formalities have been dealt with in advance of purchase	
	The company will provide limited liability	
	Which means that once the shares are fully paid up there is in	

	general no further liability	

2.	The document which governs how the company should be run is the Articles of Association.	
	The Articles are the internal regulations of the company and regulate the way in which the company exercises its powers, the division of power between the members and directors, the appointment of directors and conduct of meetings etc.	
	It is possible to alter both the Article and the Memorandum by the passing of a special resolution or by a resolution in writing signed by all the members.	
	The special resolution requires a minimum 75% vote of members and no lesser majority is acceptable.	
	There are restrictions on the general power however, so that:	
	- the alteration must not conflict with the Memorandum, the Company's Act or any other relevant law;	
	- the alteration may not override an order of the Court;	
	- the number of shares which a member is bound to subscribe for may not be increased without the members' consent, and;	
	- the alteration must be bona fide for the benefit of the company and not seek to obtain an unfair advantage for the majority shareholders.	
	It is not possible to get rid of the Articles.	

3.	John, Paul and Ringo are wrong in stating that the shareholders have no say in how the company is run.	
	Whilst John, Paul and Ringo as directors will exercise the powers of the company and manage its day to day affairs, certain powers are reserved to the shareholders in general meetings.	
	Each shareholder has one vote for each share held at that general meeting and except for resolutions where the Company's Act requires a higher majority, decisions are taken by the majority.	
	The members can restrict the power of the directors by altering the Articles or even by removing the directors from office by ordinary resolution.	