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**Law & Ethics**  
**Northern Ireland**  
1<sup>st</sup> Year Examination

**May 2013**

**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. Alternative answers will be marked on their own merits.

This publication is intended to serve as an educational aid. For this reason, the published solutions will often be significantly longer than would be expected of a candidate in an examination. This will be particularly the case where discursive answers are involved.

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**Accounting Technicians Ireland**  
**1<sup>st</sup> Year Examination: Summer Paper 2013**

**Paper: LAW & ETHICS (NI)**

**Wednesday 22<sup>nd</sup> May 2013 - 9.30 a.m. to 12.30 p.m.**

**INSTRUCTIONS TO CANDIDATES**

**For candidates answering in accordance with the law and practice of the Northern 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**

*Coleman Investments Ltd* is a private investment company, selling personal pensions. Over the last number of years the company has made modest profits on behalf of its clients, but has lost a number of clients to some other speculative investment companies, who have generated significant gains for clients by taking bigger risks. Because the profits of *Coleman Investments Ltd* have been modest in nature, no bonuses have been paid to the company's directors, Maxwell, Bentley and Preston since 2009, and they have only received pay increases in line with inflation. Six months ago at the Annual General Meeting of the company the shareholders expressed satisfaction with the investment strategy of the company, and the majority of shareholders agreed that they would rather their pensions were invested in low to medium risk options as opposed to high risk options. The general consensus appeared to be that a modest return with little risk was better than taking a greater risk that could result in a significant loss.

Maxwell, Bentley and Preston discussed the company's investment strategies after this meeting, and agreed to comply with the instructions of the shareholders. However, Bentley was really unhappy about this as he was concerned about his own personal financial position. He has recently divorced his wife and his son is about to start college and therefore a bonus would help to ease these financial worries.

Last month Bentley was attending a breakfast meeting on new corporate governance rules when he overheard a business analyst who worked for a large pharmaceutical company talking on the phone. The analyst commented that there was big news on the way from this company and that the stock market would go wild when they heard this news. Bentley was aware that this company was involved in the research of an anti-cancer vaccine and assumed that this is what the analyst was referring to. He immediately sold £5 million in government bonds held by *Coleman Investments Ltd* and used the money to purchase shares in the pharmaceutical company. Unfortunately, the pharmaceutical company made a public announcement last week that the testing of the anti-cancer vaccine had proved unsuccessful and that they were now abandoning this research. As a consequence the share price in this company dropped by almost 50% in six hours and has not improved since.

Bentley was devastated when he heard this news. He had hoped that he could secretly pocket the profit made on this investment but instead he had to requisition a directors meeting with Maxwell and Preston to explain that he had lost £2.5 million client investment capital because of his speculation. Maxwell and Preston then called an extraordinary general meeting of the shareholder's to explain what had occurred. A resolution was passed at this meeting removing Bentley as a director and requesting that Maxwell and Preston initiate legal action against Bentley for fraudulent trading. Bentley is also concerned that if the company goes into liquidation he could be held liable for wrongful trading.

- A. Discuss the law in relation to BOTH fraudulent and wrongful trading, commenting specifically on:
- (1) The definitions of both offences; **(3 marks)**
  - (2) Liability for both offences; **(2 marks)**
  - (3) Explain the test for EITHER fraudulent OR wrongful trading and include relevant case law or examples of the offence; and **(4 marks)**
  - (4) The sanctions for both offences. **(3 marks)**
- B. Is Bentley likely to be successfully prosecuted for fraudulent trading or do you think an action for wrongful trading would be taken against him? Provide reasons for your answer. **(4 marks)**
- C. Explain any TWO of the five fundamental principles of the Accounting Technicians Ireland Code of Ethics? **(4 marks)**

**Total 20 Marks**

Answer ANY FOUR of the FIVE questions in this Section

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

### QUESTION 2

Tabitha and Florence are sisters and following the death of their grandfather they have inherited a commercial property and a substantial sum of money. The sisters' grandfather was a professional tailor, and operated a sole trading business from the property. To honour their grandfather's memory Tabitha and Florence decided to use the money and property to establish a designer children's clothing store. They contact their solicitor who advises them to establish a private limited company. He explains to them that they will need to register the company at the Companies Registry in Belfast.

They are unsure as to what any of this means and seek your advice:

- A. List the SIX documents that must be submitted to the Companies Registrar in order to register the company (3 marks)
- B. Explain what the Certificate of Incorporation is and identify any TWO details contained in this document. (3 marks)
- C. Explain the purpose of the Articles of Association and list any TWO provisions that could be contained in the Articles of Association. (2.5 marks)
- D. Does Tabitha and Florence's company also require a Trading Certificate? Explain your answer. (1.5 marks)

**Total 10 Marks**

### QUESTION 3

*Serendipity Publishing Ltd* recently contacted their bank, the *People's Bank of Lisburn* requesting a £500,000 loan in order to replace some of their printing machinery. The Bank has agreed to this loan on condition that the company give them a fixed charge over the new machinery and a floating charge over their stock. In this regard discuss the following:

- A. Draw a Table outlining any THREE differences between a fixed charge and a floating charge. (6 marks)
- B. Within what time period must a company register these charges and can the company register these charges outside that time period? (2 marks)
- C. Outline the consequences of non-registration of a charge. (2 marks)

**Total 10 Marks**

### QUESTION 4

Harrison was a director of *Ashbury Travel Ltd* for over fifteen years. In the last year he was removed from his position as director, when the company auditor discovered that he had been lodging cheques payable to the company into his own personal bank account. Harrison has now received notification that an application has been received by the High Court for his disqualification. He is uncertain as to what that means and seeks your advice:

- A. Define a director and list any TWO types of directors.

**(3 marks) P.T.O.→**

B. Explain the effect of a Disqualification Order.

(2 marks)

C. Identify FIVE grounds upon which a Disqualification Order may be imposed.

(5 marks)

Total **10** Marks

#### QUESTION 5

A. Jackson has recently been asked to take on the role of company secretary with *Logan Enterprises Ltd*. In relation to this position discuss any THREE functions of a company secretary and identify the experience a company secretary would be expected to hold

(5 marks)

B. Finlay is the recently appointed company secretary of *Moonlight Manufacturing Ltd*. He is attending his first general meeting and seeks your advice in this regard:

(i) What are the THREE types of resolutions a private company can pass?

(1.5 marks)

(ii) What are the TWO methods by which voting can take place?

(2 marks)

(iii) Define and outline the role of a proxy.

(1.5 marks)

Total **10** Marks

#### QUESTION 6

*Funky Donkey Ltd* was a very successful company in Northern Ireland with an annual turnover of around €3 million in 2011. They specialised in making life size donkeys that children could sit on and ride. The donkey was battery operated and contained all the necessary safety equipment. Unfortunately, competition from a new company called *Fony Pony Ltd* has dramatically changed the success of *Funky Donkey Ltd*. This new company *Fony Pony Ltd* sell life size ponies that can not only walk, but trot, and they can also talk. *Funky Donkey Ltd* no longer makes a profit and is finding it difficult to pay their debts. They have sought advice and have been told that the best option for their company is to go into Administration.

A. Explain the role of the Administrator and the effect of administration on *Funky Donkey Ltd*.

(5 marks)

B. If Administration is not successful and the company has to be wound up outline the priority of payment of company debts in a liquidation.

(5 marks)

Total **10** Marks

P.T.O.→

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

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

**QUESTION 7**

Two months ago Cooper was driving his car at speed down a country road. As he was driving, his mobile phone rang and he reached behind him to the back seat of the car to take the phone from the pocket of his coat. Watson was driving along the same road and collided with Cooper whose car swerved onto the side of the road on which Watson was driving. The Police were called to the scene of the accident and took statements from both Cooper and Watson. As a consequence of the collision Watson's car was completely written off and he incurred some serious personal injuries that have resulted in his absence from work since the accident.

Last week Cooper received a letter from Watson's solicitor stating that Watson was suing Cooper for his personal injuries and the damage to his property arising from Cooper's negligent driving. Yesterday Cooper received a summons from the Police charging him with dangerous driving.

Cooper is confused as he thought that two separate cases cannot arise out of the same incident.

Explain the distinction between civil law and criminal law in Northern Ireland under any **FOUR headings (8 marks)** and advise Cooper as to whether or not he is correct in his belief that two separate cases cannot arise out of the same incident (**2 marks**).

**Total 10 Marks**

**QUESTION 8**

Morrison recently started dating a girl named Beth. Within two weeks of their first date Beth was due to celebrate her 20<sup>th</sup> birthday. Morrison did not want to buy her an expensive gift, as he was unsure as to whether their dating would turn into a relationship. He decided to buy her a bouquet of flowers and a card. While purchasing the card in his local newsagent he also decided to buy her a lottery ticket and he put it into the card. Beth was delighted with her flowers and thanked Morrison for them, as well as the card and lottery ticket. She joked with him about the lottery ticket and teased him, saying "*well I'll have to share the prize with you if I win now*".

On their next date Morrison and Beth had a huge argument when she discovered that he was also dating another girl, while dating Beth. Morrison told Beth that he was just keeping his options open and didn't think that Beth would be bothered. Beth told Morrison that she would prefer it if he never contacted her again and left.

A week after this argument Morrison heard from a mutual friend that Beth had won the £3 million jackpot in the weekend lottery. He then rang Beth asking her if her lottery win was from the ticket he had given her, and Beth confirmed that it was, but told him that he could forget about sharing in her winnings – that she was not giving him a cent. Morrison is now considering suing Beth for breach of contract.

A. Discuss the law in relation to intention to create legal relations in the context of both social contracts and commercial contracts.

**(8 marks)**

B. In light of this discussion determine the potential success or otherwise of Morrison's proposed claim against Beth for breach of contract.

**(2 marks)**

**Total 10 Marks**

**P.T.O.→**

**QUESTION 9**

The profits of *Sunshine Printing Ltd* have significantly declined in recent years due to the development of e-books. They are now considering making almost 30% (60 employees) of their workforce redundant. In this regard advise the company in relation to the following matters:

- A. Outline the legal definition of redundancy. (2 marks)
- B. Explain any TWO rights that an employee has on redundancy. (2 marks)
- C. Explain the procedure of Good Industrial Practice as set out in *Williams v Comar Maxim Ltd* (1982). (4 marks)
- D. Discuss the consultation obligations imposed upon *Sunshine Printing Ltd* in respect of these collective redundancies. (2 marks)

**Total 10 Marks**

**QUESTION 10**

Mason, a plumber, was shopping in *Richmond Hardware Supplies* when an overhead shelf collapsed and the contents of the shelf fell on Mason. As a result of this accident Mason suffered a broken pelvis and spent six weeks in hospital recuperating.

As a result of his hospitalisation, Mason (who is self-employed) was unable to complete a number of plumbing projects that he was working on, and also could not take on new clients (as he was unsure as to how long his injuries would prevent him working). In addition, Mason (who also models in his spare time) was due to compete in *Northern Ireland's Hunky Handyman* competition a week after the accident. This competition was offering a top prize of £10,000 cash and a holiday to Las Vegas. Because of his injuries he was unable to compete in this competition. Prior to the competition the bookies were tipping Mason as the favourite to win this competition.

Mason is planning on suing *Richmond Hardware Supplies* for his injuries and in this regard he seeks your advice:

- A. In the context of the law of negligence, discuss the concept of remoteness of damages and assess whether *Richmond Hardware Supplies* are obliged to compensate Mason for his personal injuries, his loss of income and his loss of future income. (8 marks)
- B. As he was the bookies favourite Mason is also considering suing *Richmond Hardware Supplies* for the loss of the £10,000 cash and the holiday to Las Vegas. State whether this loss is likely to be recoverable by Mason. (1 mark)
- C. Outline the statute of limitations within which Mason must bring his claim against *Richmond Hardware Supplies*. (1 mark)

**Total 10 Marks**

**QUESTION 11**

Discuss any FOUR terms implied into every consumer contract for the sale of goods under the terms of the Sale of Goods Act 1979 (as amended).

**Total 10 Marks**

# 1st Year Examination: May 2013

## Law & Ethics (NI)

### 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. (1) Definitions:** Fraudulent Trading is defined under CA 2006 s.63, as occurring where “any business of a company is carried on *with the intent to defraud creditors* of the company or creditors of any other person, or for any fraudulent purpose, *every person* who is *knowingly* a party to the *carrying on of the business* in that manner commits an offence.” **(1.5 marks)** – whereas wrongful trading is “where at some time *before the commencement of the winding up of a company*, that person *knew or ought to have concluded* that there was *no reasonable prospect* that the company would avoid going into insolvent liquidation... and that person was a *director* at the time” and continued to trade. **(1.5 marks)**
- A.(2) Liability for the Offence:** in relation to fraudulent trading – the legislation states that any person can be found liable – this means that the offence can be committed by company officers or any other person who is connected to the fraudulent act **(1 mark)** – whereas wrongful trading only applies to company directors **(1 mark)**
- A.(3)** (i) the test for fraudulent trading is quite difficult to prove as you must demonstrate “knowledge” and “intent to defraud” – although the fraudulent act may be either a one-off or a continuous action to complete the offence – examples: *Re Hunting Lodges Ltd (1985)*, *Re Aluminium Fabricators Ltd (1983)*– siphoning-off company assets, using company assets for personal purposes, keeping two sets of books of account – (ii) the test for wrongful trading is when a *director* is deemed to know that there was *no reasonable prospect* that the company could have avoided going into insolvent liquidation, if that would have been the conclusion of a *reasonably diligent person with the general knowledge, skill and experience* that might reasonably be expected.” **(either test for 4 marks)**
- A.(4) Sanctions:** in relation to fraudulent trading the criminal sanctions include: on summary conviction imprisonment not exceeding 6 months &/or a fine – conviction on indictment imprisonment not exceeding 10 years &/or a fine) – the civil sanctions encompass personal liability for the debts of the business arising from the fraudulent act **(1.5 marks)** – whereas with wrongful trading there are no criminal sanctions only civil liability attaches in that a person may be held personally liable in the civil courts for the debts of the company which arise from wrongful trading and they may be disqualified from acting as a company officer for up to 15 years **(1.5 marks)**
- B. Conclusion:** In the circumstances Bentley will most likely be charged with fraudulent trading – as he acted with knowledge that he was acting against the investment strategy endorsed by the creditors, and there is evidence that he did so for the purpose of defrauding them- he did it to secretly pocket any money made – a liquidator would probably not bring an action against him for wrongful trading as even if Bentley had not acted fraudulently, he did not trade when there *no reasonable prospect* that the company would avoid going into insolvent liquidation. **(4 marks)**
- C.** The five fundamental principles of the Code of Ethics are: (i) integrity: be honest and straightforward and not associated with any material that is misleading or furnished recklessly (ii) objectivity: must be fair

(iii) professional competence and due care: maintain professional knowledge and skill and attend relevant practical training and other necessary courses (iv) confidentiality: do not disclose information to third parties and persons must ensure staff under their control are aware of the rules of confidentiality (v) professional behaviour: comply with relevant laws and regulations and not bring reputation of business into disrepute or make exaggerated claims as to their qualifications. **(any 2 for 4 marks)**

### Solution to Question 2

- **A. (i)** Application for registration (ii) Memorandum of Association (iii) Articles of Association (iv) Statement of capital and initial shareholdings (v) Statement of proposed officers (vi) Statement of compliance **(3 marks)**
- **B.** Certificate of incorporation allows the private company to begin to trade. It proves that the company is validly and legally incorporated and is given to the company by the Registrar provided (s)he is satisfied that all registration documents are in order and that the company complies with the registration requirements **(2 marks)**. The Certificate will contain the following information (i) name and registered number of the company (ii) date of incorporation (iii) limited by shares or guarantee (iv) location of company's registered office (v) company private or public (vi) signature of registrar and official seal **(any 2 for 1 mark)**
- **C.** Articles of Association: This document regulates the internal activities of the company and contains the internal rules and regulations regarding the governance of the company – company may adopt standard model articles **(1.5 marks)** – it deals with issues such as share capital, meetings, directors, secretaries, auditors and accounts, dividends, liquidation etc... **(any 2 = 1 mark)**
- **D.** As the company is a private limited company they will not require a Trading Certificate before commencing business- only a public company requires a Trading Certificate. **(1.5 marks)**

### Solution to Question 3

- **A.** Differences between fixed and floating charges: **(any 3 x 2 marks = 6 marks)**

	<b>FIXED CHARGES</b>	<b>FLOATING CHARGES</b>
(1) Creation	Charge is fixed to an asset	Charge floats over all or part of an asset
(2) Attachment	Charge attaches to asset on creation of the charge	Charge attaches to asset only on crystallisation of the charge
(3) Consent	Company cannot sell the asset without the consent of the lender	Company can trade freely with the assets in the normal course of business without having to gain permission
(4) Advantages for creditor	The repayment of debts secured by a fixed charge takes priority over floating charges	Assets which floating charges are attached to are usually more realisable assets (i.e. sell more easily)
(5) Disadvantages for creditor	Assets may be difficult to sell especially in a poor economic climate	In liquidation, floating charges are only repaid after fixed charges and preferential debts have been satisfied

- **B.** Registration Information: registered within 21 days of creation – Court may grant leave to register charge after this period **(2 marks)**
- **C.** Consequences of Non-Registration: (1) the charge is void, (2) the debt becomes unsecured, (3) the debt becomes instantly repayable, and (4) the company is liable to a fine **(any 2 = 2 marks)**

**Solution to Question 4**

- **A.** Directors: company law defines a director as any person occupying the position of director, by whatever name called **(1 mark)** – types of directors: (1) executive directors, (2) non-executive directors, (3) de facto directors, (4) shadow directors, (5) managing director **(any 2 = 2 marks)**
- **B.** Disqualification Order: This is an Order brought against directors which disqualifies them from acting as director of any company for a period of up to 5 years (summary offence) or 15 years (on indictment) with a minimum period being 2 years disqualification. The Court does consider mitigating circumstances **(2 marks)**
- **C.** Grounds: (1) where a person is found guilty of fraud (2) where a person is found guilty of general misconduct in connection with companies (3) where a person is disqualified under company legislation-fraudulent or wrongful trading (4) where a person becomes bankrupt (5) where a person is of unsound mind (6) where they are absent from duties for a period of 3 months without leave (7) where they are determined to be unfit to act as a director- e.g. put creditors at unnecessary risk/failure to have proper accounts (8) they resign **(any 5 = 5 marks)**

**Solution to Question 5**

- **A.** Company Secretary functions: (i) establish and maintain statutory registers (ii) fill out forms on time for registrar (iii) organise and minute company and board meetings (iv) ensure accounting records meet statutory requirements (v) monitor statutory requirements of the company **(any 3 for 3 marks)** Experience: (i) already holds an office position (ii) 2 out of past 3 years experience of secretary of public company (iii) is barrister, advocate, solicitor (iv) member of qualifying body (v) capable of discharging functions **(any 2 for 2 marks)**
- **B.** (i) ordinary, special and written **(0.5 marks each)** (ii) show of hands or a poll **(2 marks)** (iii) a member can appoint a proxy to attend a meeting in their place and exercise all rights at the meetings including the right to vote on their behalf **(1.5 marks)**

**Solution to Question 6**

- **A.** Role of Administrator: (i) notify company of appointment (ii) examine statement of company's affairs (iii) put forward proposals for company (iv) call a meeting with the creditors within 10 weeks of appointment **(3 marks)** – Effect of administration: (i) no steps can be taken to wind up company (ii) company cannot start process of voluntary wind up (iii) no legal proceedings can be brought against company by creditor **(2 marks)**
- **B.** Priority of Payment of company's debts upon liquidation: (a) the costs of liquidation, (b) the fixed charges in the order that they were created (provided that they have been correctly registered within 21 days), (c) the preferential debts (occupational pension scheme and employee wages), (d) the floating charges in the order they were created (provided that they have been correctly registered within 21 days), (e) the unsecured creditors e.g. Inland Revenue, and (f) members dividends (g) the residue to the shareholders **(5 marks)**

**Solution to Question 7**

Distinction between Civil Law and Criminal Law in Ireland	
(1) Definitions	Civil law is deemed to be private law – and it generally concerns disputes between individuals, where one persons sues another person for a wrong – a civil claim is called an action and the parties are known as the plaintiff and the defendant – whereas criminal law is deemed to be public law – which involves

	breaching that code – a criminal case is called a prosecution and the party known as the prosecution and the defence (accused)
(2) 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)
(3) Tests	For a civil court to find a defendant liable the test is <i>the balance of probabilities</i> – for a criminal court to find a defendant guilty the test is <i>beyond all reasonable doubt</i>
(4) Commencement of proceedings	In civil law an action is initiated by way of pleadings – in criminal law a prosecution is initiated by PPS either through a summons or an indictment
(5) Heard By/Findings	Heard by judge in civil cases- liable or not liable and a judge and jury in criminal cases- guilty or not guilty
(6) 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 ...
(7) Courts	There are different hierarchies of civil and criminal courts – the main civil courts are the Magistrates, County, High (differentiated by monetary jurisdiction) and the Court of Appeal, Supreme court (appellate court) – whereas the main criminal courts are the magistrates, crown court, the court of appeal and the UK Supreme Court (appellate courts)

**(any 4 x 2 marks = 8 marks)**

- Conclusion that Cooper is not correct in his belief that two separate cases cannot arise out of the same incident – the purpose of the civil claim against him is to compensate the victim for his personal injuries and the damage to his property arising from Cooper's negligent driving, whereas the purpose of the criminal action is to punish him for behaviour that society classifies as egregious (his dangerous driving) **(2 marks)**

#### Solution to Question 8

- **A.** 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 and 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), Mackey v Jones (1959), etc... – however, extraneous factors may demonstrate an intention and rebut the presumption, such as in Merritt v Merritt (1969), Jones v Padavatton (1969), Simpkins v Pays (1955) **(3.5 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 – 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) etc **(3.5 marks)**
- **B.** Conclusion: In our scenario as Morrison and Beth do not have a commercial relationship – the contract would be classified as a social one – as a friend is making a promise to another friend the Courts will assume that any promise is not intended to be legally binding – as there is no evidence to rebut this presumption – Morrison cannot sue Beth for non-payment/breach of contract **(2 marks)**

#### Solution to Question 9

- **A. Redundancy: Definition of Redundancy:** Section 174 of the Employment Rights (Northern Ireland) Order 1996 defines redundancy as being a dismissal attributable wholly or mainly to (1) the fact that the employer has ceased, or intends to cease, to carry on the business for the purposes of which the employee was employed by him or has ceased, or intends to cease, to carry on that business in the place where the employee was so employed, or (2) the fact that the requirements of that business for employees to carry out work of a particular kind, or for employees to carry out work of a particular kind in the place where they were so employed have ceased or diminished or are expected to cease or diminish **(2 marks)**
- **B. Rights:** (i) right to statutory minimum notice (ii) right to redundancy payment (iii) right to time off during notice period (iv) right to be individually informed **(any 2 x 2marks)**
- **C. Procedure of good industrial practice:** (i) consider alternatives to redundancy (ii) consult with employees trade unions and representatives about ways to avoid dismissals (iii) consult with employees trade unions and representatives about best selection procedure (iv) fair objective selection procedure (v) selection procedure to be followed (vi) seek to offer alternative employment where possible (vii) inform employees **(4 marks)**
- **D. Consultation Obligations:** there is also a statutory obligation upon an employer who plans to undertake collective redundancies (2 classifications: 21-99 employees- 30 days in advance of first dismissal and 99+ employees 90 days in advance) to consult "in good time." **(2 marks)**

#### Solution to Question 10

- **A. Remoteness of Damages:** this is a device used by the Court to determine whether or not the level of damage caused by the breach could have been reasonably foreseen – if the courts determine that the level of damage caused by the breach was too remote and could not have been foreseen by a reasonable person, they will not hold the defendant liable – this means that although the defendant's breach may cause the damage, the defendant will not be held accountable for all of the damage – this is because the damage resulting from the breach is so unexpected or 'remote' that the court considers it unfair to hold the defendant accountable for a level of damage he could not have foreseen – this test is known as the 'reasonably foreseeable' test and was developed in *The Wagon Mound (1961)* – it has also been applied in cases such as *Campbell v Percy Bilton (1988)* **(7 marks)** – conclusion that *Richmond Hardware Supplies* are obliged to compensate Mason for his personal injuries, his loss of income and his loss of future income as these losses are all foreseeable **(1 mark)**
- **B. The loss of the £10,000 cash and the holiday to Las Vegas is not recoverable** – as this loss was not foreseeable – they could not have known he was entering this competition, and there is no definitive proof that he would have won **(1 mark)**
- **C. Statute of Limitations:** six years or three years – from date of wrongful act or damage from act becoming known **(1 mark)**

#### Solution to Question 11

- **Terms implied into every contract Sale of Goods contract:** (1) implied conditions as to title/right to sell – Section 12 – this assumes that the goods are free from charges/mortgages at the point of sale or that the seller has the right to sell **(2.5 marks)** (2) Section 13 – implied conditions as to description – this assumes that goods sold by description must correspond to that description – a sale by description does not preclude a sale where goods are exposed for sale and selected by the consumer – a description includes tags, labels

etc... **(2.5 marks)** (3) Section 15 – implied conditions as to sale by sample – Section 15(2) – this assumes that the bulk of the goods purchased must correspond with the sample – the consumer must also be afforded a reasonable opportunity for inspection, **(2.5 marks)** (4) Section 14 – implied conditions as to satisfactory quality – this assumes that the goods are as durable as a reasonable person would expect – taking account of the price, description and all other relevant circumstances (time of sale, changing standards) – there is an exception to this term where the defect is brought to the attention of the buyer before the contract is made, or the defect should be obvious to a reasonable person by an application of the doctrine of caveat emptor **(2.5 marks)** – (5) Section 14 – fitness for purpose – this implied term also assumes that the goods are fit for the purpose intended – assuming normal usage – if the goods are going to be used for an alternate purpose, and the seller is aware of this purpose, then the buyer can assume that they are fit for that alternate purpose – where a reasonable alternate use is notorious within the market – then an assumption of fitness for purpose is assumed, unless the seller specifically states otherwise (students should also provide examples of relevant case law when answering this question) **(2.5 marks)** **(any 4 x 2.5 = 10 marks)**

# Accounting Technicians Ireland

## Examiner's Report May 2013 Law & Ethics (NI)

Statistical Analysis – By Question											
Question No.	1	2	3	4	5	6	7	8	9	10	11
Average Mark (%)	56%	69%	68%	66%	61%	61%	87%	39%	59%	29%	42%
Nos. Attempting	194	149	119	180	140	181	167	128	158	157	133

Statistical Analysis - Overall	
Pass Rate	71%
Average Mark	57%
Range of Marks	Nos. of Students
0-39	28
40-49	28
50-59	52
60-69	40
70 and over	48
Total No. Sitting Exam	196
Total Absent	61
Total Approved Absent	17
Total No. Applied for Exam	274

### General comments:

The standard overall was very good with over 70% of candidates attaining a pass mark and a significant number of these students gained a merit grade. There was a significant improvement in the standard of answers given and there were a number of candidates from each exam centre gaining over 80%.

Students generally performed well in Section B (company law) and in questions 7 and 9 from Section C (General Law). The compulsory question (Question 1) was not as well answered this year and students who failed to pass this question were less likely to attain an overall pass grade in the exam. As in previous years, many candidates who attempted to answer question 10 (Tort law) displayed significant gaps of knowledge. This year the standard of answers given by students to question 11 (Consumer Law) was not as high as in previous years.

Nearly all candidates this year, who did not achieve a pass grade answered at least one question to a high standard. This proves that all candidates sitting this paper have the ability to pass the exam, but they must put in the time and effort into their revision. If they do, they will attain a pass grade. Also, as in previous years many candidates narrowly missed out on attaining a merit grade. These students had gained high marks in some questions, therefore with more thorough revision they would have gained a merit grade. All candidates should revise the manual and not question spot as this will enable you to achieve the grade which reflects your ability.

General advice:

1. Revise topics from the manual and not from previous exam papers
2. Read the question asked carefully and answer all parts (always attempt to answer every part of the question as marks cannot be awarded for empty spaces).
3. Answer only the question that is being asked (avoid providing a lengthy paragraph which answers the question you hoped would be asked and not the one asked)
4. Avoid one word answers unless the answer so requires it. If the question asks you to discuss or explain then you will be expected to expand on your answer and prove to the examiner that you understand the legal issue/concept referred to in the question.
5. If referring to case law always refer to some facts of the case. Do not simply write down the name of the case without some reference to the facts of the case. If you forget the name of the case, refer to the facts of the case as marks will be awarded for correct application of the facts.

This year some papers quite difficult to mark due to their presentation. Candidates should:

1. Use a blue or black ink pen
2. When answering a question divided into separate parts please leave a small gap between each answer to each part
3. Start the answer to each question on a new page

## **Section A: Corporate Governance, Offences, Disciplinary and Ethics**

### **Question 1 (compulsory question):**

Wide variation in the standard of answers given. Some candidates gained full or nearly full marks and other students failed to gain any marks. Candidates must learn both chapters 16 and 17 as the question will require you to have knowledge from both chapters. All candidates who gained a high mark in this question passed the exam. Marks were lost generally due to the following:

- A. (1) Students were not familiar with the different tests or they defined only one test. Many students defined insider dealing.  
(2) Students incorrectly referred to the possible penalties that could be imposed instead of referring to the persons who could be found guilty or liable for each offence. Generally, students failed to identify the fact that wrongful trading only applies to company directors  
(3) Students failed to identify the correct test and failed to refer to any relevant case law. Some students referred in detail to the test applied to the offence of insider dealing. Other students lost marks by describing both tests in insufficient detail.  
(4) Students failed to know what the sanctions were in any great detail. It was not sufficient to write a fine or imprisonment only. Students failed to state that only civil liability attaches to wrongful trading.
- B. Students who had failed to correctly define the tests generally failed to answer this part correctly. Students who correctly stated that Bentley may be charged with fraudulent trading providing to justify their answer or provide sufficient reasons.
- C. Students failed to identify two principles or failed to describe them in any detail. Some students incorrectly referred to the principles contained in the combined code of corporate governance.

**Section B: Company Law****Question 2:**

A mixed standard of answers. Generally, answers given in parts A and D were very poor.

- A. Students incorrectly referred six details contained on a Certificate of Incorporation and therefore failed to identify any of the documents that should be submitted in order to attain the Certificate of Incorporation.
- B. The majority of students attained full or nearly full marks.
- C. The majority of students attained full or nearly full marks.
- D. A significant number of students failed to display knowledge of the fundamental difference between a public limited company and private limited company in that a private limited company does NOT require a Trading Certificate to commence trading.

**Question 3:**

The majority of students who attempted this answer passed this question. Some students performed extremely well but many students failed to answer parts B and C correctly.

- A. Generally all students attained nearly full marks displaying a satisfactory level of knowledge. Students lost marks who provided one word answers such as 'fixed' and 'floats.' They should write 'fixed to a fixed asset' or something similar.
- B. The vast majority of students failed to correctly state 21 days. Many students made wild guesses stating periods of '6 months' or '3 years' or 'within 24 hours.' Learn the detail in the chapters. A significant number of students failed to refer to whether or not a charge can be registered outside the period- therefore remember to read the question carefully.
- C. Some students provided at least one correct consequence such as a fine.

**Question 4:**

Generally answered quite well.

- A. Most students scored well. Some students failed to define a director AND give two examples of directors. Again, read the questions fully and double check your answers.
- B. Some students failed to state how long a director could be disqualified for.
- C. Students who lost marks failed to identify five separate grounds and listed instead different examples which would all fall under the same ground.

**Question 5:**

Some excellent answers and some very poor answers. Some very weak answers for Part A.

- A. A significant number of students scored full marks and had obviously revised this topic well. Many students rhymed off the functions and experience expected of a general secretary e.g. typing and filing skills, showing a complete failure to display any knowledge or understanding of the role of a company secretary.
- B. (i) Students incorrectly identified examples of resolutions passed.  
(ii) Most students scored full marks in this question  
(iii) Some students failed to know what exactly a proxy is and therefore failed to gain any marks.

**Question 6:**

This was generally well answered.

- A. Students lost marks as they concentrated on defining the role of the administrator and failing to answer the effect of administration on a company.
- B. Generally students were able to correctly list the priority of payment of debts. Many students failed to remember to include the costs of liquidation in their answer.

**Section C: Business Law****Question 7:**

As in previous years, this question was one of the best answered with many students scoring full marks.

- A. Most students were able to list at least four distinctions.
- B. Nearly all students correctly stated that two cases can arise from one incident and were able to provide case law examples.

**Question 8:**

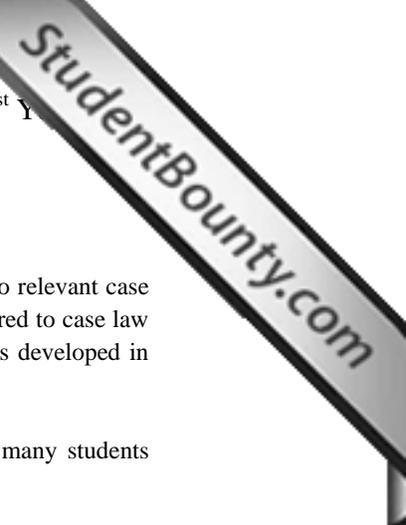
The answers provided to this question were generally very weak, especially to Part A. Many students launched into an irrelevant discussion of the four essential elements of a contract without referring in any detail to the third essential element, which was what was being tested.

- A. Many students failed to understand that question was testing your knowledge specifically of the intention to create legal relations. Students who performed well referred to the difference between domestic and commercial agreements and referred to relevant case law.
- B. Generally students correctly concluded that the agreement would not be enforceable. Full marks were awarded to students who provided reasons.

**Question 9:**

Mixed answers provided by students who displayed weak knowledge in the area of redundancy. Although some students scored full marks.

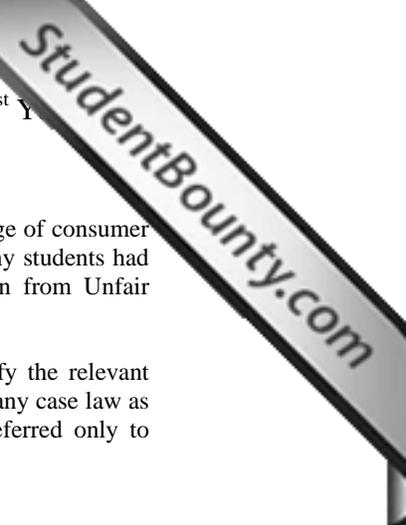
- A. Students failed to define the key concept in any great detail or prove any understanding of the concept of redundancy.
- B. Students incorrectly referred to reasons that would be considered as unfair dismissal rather than identifying the rights an employee has on redundancy.
- C. Students incorrectly referred to the grievance procedures in relation to unfair dismissal. Many students who referred to the correct procedure of good industrial practice failed to identify all the steps.
- D. The majority of students failed to state the correct number of days. Some students clearly made random guesses and referred to wholly incorrect time periods such as '48 hours' and '1 year'.



**Question 10:**

This question produced some very weak answers.

- A. Students failed to define or discuss in any detail the concept asked and failed to refer to relevant case law. Many students incorrectly referred to the modern day 'Duty of Care' test and referred to case law that was not relevant. Students who passed this question correctly identified the test as developed in *The Wagon Mound* (1961)
- B. The majority of students correctly answered this part
- C. Many students correctly identified the correct time period but as in other questions, many students were completely incorrect in their answers provided.



**Question 11:**

This question produced some very disappointing results. This question tested the basic knowledge of consumer law and all students should have been able to gain at least a pass mark. It was evident that many students had incorrectly expected a question that would test their knowledge of the Consumer Protection from Unfair Trading Regulations 2008. DO NOT QUESTION SPOT- REVISE FROM THE MANUAL.

Students who referred to the Sale of Goods act 1979 (as amended) failed to correctly identify the relevant sections or to discuss in any detail each implied term. The majority of students failed to refer to any case law as specifically requested to do so. Many students fail to gain any marks as they incorrectly referred only to misleading or prohibited practices.