
Law & Ethics **Northern Ireland**

1st Year Examination

August 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

1st Year Examination: Autumn Paper 2013

Paper: LAW & ETHICS (NI)

Wednesday 28th August 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.

Compulsory Question

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

QUESTION 1

Parker has been employed as a qualified accounting technician with *Sheldon Scientific Research Ltd* for the past five years. As well as acting as an accounting technician Parker is also the company's office manager. Last year the company's contract with its main laboratory equipment supplier came up for renewal and the directors of the company asked Parker to investigate whether he could source these lab supplies from an alternate supplier at a cheaper cost.

Following a review, Parker reported back to the directors that he could source these lab supplies for 8% less than they were currently paying if they signed a three year contract with *Booth Industries*. Based on Parker's reassurances that *Booth Industries* were offering the best deal the directors of *Sheldon Scientific Research Ltd* agreed to this contract.

Within six months of entering into this contract the directors of *Sheldon Scientific Research Ltd* have expressed dissatisfaction with the quality of the supplies being provided by *Booth Industries* and their ability to deliver on schedule. Following an independent review of *Booth Industries* the directors of *Sheldon Scientific Research Ltd* have discovered that the business is in fact owned by Parker's brother and that Parker was using *Sheldon Scientific Research Ltd* bank accounts to transfer large sums of cash received from *Booth Industries*, which was then being transferred to a foreign unknown bank account and subsequently used to buy property.

As a consequence of these discoveries *Sheldon Scientific Research Ltd* has reported *Booth Industries* and Parker on suspicion of money laundering and has dismissed Parker and reported him to Accounting Technicians Ireland, for breach of his ethical obligations.

- A. Define the term money laundering (2 marks)
- B. Explain the THREE offences relating to money laundering (3 marks)
- C. Explain the TWO main safeguards that members and student members should follow to ensure compliance with Accounting Technicians Ireland's Code of Ethics. (4 marks)
- D. If the Complaints Committee of Accounting Technicians Ireland considers that the actions of Parker are too serious and refer the case for adjudication to the Disciplinary Tribunal, outline any FIVE rights of Parker as a member at a hearing of the Disciplinary Tribunal. (5 marks)
- E. If the Disciplinary Tribunal upholds the complaint against Parker and excludes him from membership of Accounting Technicians Ireland, discuss the appeals process available to him via the Appeals Tribunal commenting specifically on the following:
- (1) The time limit for lodging an appeal. (1 mark)
- (2) Any TWO grounds for an appeal. (2 marks)
- (3) Any TWO outcomes of an appeal. (1 mark)
- F. Comment on whether you consider that the actions of Parker are in breach of Accounting Technicians Ireland's Code of Ethics.

Note: a discussion of the actual terms of the Code is NOT required.

(2 marks)

Total 20 Marks P.T.O.→

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

Wilson and Grover have operated a successful management consultancy business in partnership for in excess of ten years. Recently their accountant has recommended to them that they consider converting the partnership into a limited liability company to obtain the benefits of separate legal existence. Both Wilson and Grover think that this is a good idea, but are unsure whether to establish a public limited company or a private limited company.

Draw a table and outline to Wilson and Grover any FIVE differences between public limited companies and private limited companies in Northern Ireland.

Total 10 Marks

QUESTION 3

Following the death of her great-aunt Josephine, Shannon has just inherited a number of shares as follows:

100,000 £1 shares in *Rosen Enterprises Plc*, £0.20 paid.

300,000 £1 shares in *Buttercup Designs Ltd*, discounted to £0.80 payable per share.

Shannon does not understand the meaning of these bequests and seeks your advice as follows:

- A. Define a share. (1 mark)
- B. Explain the nature of the shares that she has inherited in *Rosen Enterprises Plc* and discuss her liability, if any, in relation to these shares. (4 marks)
- C. Discuss the rules regarding issuing shares at a discount, and assess the liability, if any, of Shannon in relation to the shares that she has inherited in *Buttercup Designs Ltd*. (5 marks)

(5 marks)

Total 10 Marks

QUESTION 4

Dawson is an executive director of *Quantum Logistics Ltd*. Radley is a non-executive director of this company, and is also a qualified accounting technician. As the company's profits were declining in recent years Radley undertook an independent review of the accounts in order to ascertain whether costs could be reduced. In the course of this review Radley discovered that Dawson had borrowed £200,000 from the company in 2008. To date no repayments have been made by Dawson on foot of this loan. Radley has requisitioned a meeting of the Board of Directors to discuss this situation.

- A. Explain the distinction between executive and non-executive directors. (4 marks)
- B. In the context of directors' loans:
- (1) Discuss the rule regarding directors' loans. (2.5 marks)
- (2) Outline any TWO exceptions to this rule. (2 marks)

P.T.O.→

QUESTION 4 (*Cont'd*)

List the sanctions that can be imposed where a breach occurs.

(1.5 marks)

Total 10 Marks

QUESTION 5

In the context of company meetings discuss each of the following:

- A. The main differences between ordinary resolutions and special resolutions (**4 marks**), including ONE example of a matter that can be passed by an ordinary resolution and ONE example of a matter that can be passed by a special resolution (**2 marks**). (6 marks)
- B. Who is eligible to propose a written resolution? (2 marks)
- C. What TWO business decisions CANNOT be passed by a written resolution? (2 marks)

Total 10 Marks

QUESTION 6

Paisley Engineering Ltd has recently been put into liquidation following a resolution of its creditors. The creditors have appointed Kennedy as the Liquidator and a Committee of Inspection to liaise with Kennedy on behalf of the creditors. Sherlock is an unsecured creditor of *Paisley Engineering Ltd* and is unsure as to the powers of a Liquidator.

- A. Outline any EIGHT powers of a company Liquidator. (8 marks)
- B. State TWO ways in which a Liquidator's appointment may be terminated. (2 mark)

Total 10 Marks

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**

Riley is a qualified accounting technician who has recently been arrested by the police and charged with laundering money on behalf of his employer. He is aware that he is facing a criminal prosecution, but is unsure of the jurisdiction of the criminal courts or the consequences of a successful prosecution.

A. Discuss the jurisdiction of the following criminal courts:

(1) The Magistrates Court (2 marks)

(2) The Youth Court (2 marks)

(3) The Crown Court (2 marks)

(4) The Court of Appeal (2 marks)

B. List any FOUR criminal sanctions that can be imposed where a person is found guilty of a criminal offence. (2 marks)

Total 10 Marks**QUESTION 8**

Cassidy recently booked a spa break with the *Hamptons County House Hotel and Spa*. She booked this trip over the phone and paid for it by credit card at the time of the booking. After checking into the Hotel she went down to the spa where she had an appointment for the pamper package. At the spa reception desk she was given a key to a locker in the changing room and told to go and change into a robe and that a beauty therapist would then take her into the therapy suites. In the changing room she noticed a sign on the wall which stated:

“Items are left in the changing room and lockers entirely at the users own risk. The Hamptons County House Hotel and Spa does not accept any liability, whether express, implied or statutory for the loss or theft of, or damage to, items left in the changing room or lockers howsoever, whensoever or wheresoever such loss, theft or damage occurs”.

As Cassidy was wearing her diamond engagement ring when she checked into the spa she decided to remove it in case the oils from the beauty treatment caused it to tarnish. She put it into the locker and locked it. She believed that the ring would be safe in the locker as she had possession of the key.

After her treatments were completed she returned to the changing room, but was shocked to discover that her locker had been emptied and that her ring and purse were missing. Following discussions with the receptionist Cassidy learned that another client had told the receptionist that she had lost her locker key and the receptionist had given her a master key that could open all the lockers. It now transpires that more than a dozen different lockers were opened and the contents stolen.

Cassidy has contacted both of the managers of the Hotel and the Spa and informed them that she plans on taking legal action against them in respect of her stolen ring and purse. The *Hamptons County House Hotel and Spa* are not denying liability for this loss, but have informed Cassidy that they intend to rely on the exemption clause in the changing room to escape liability.

P.T.O.→

QUESTION 8 (*Cont'd*)

- A. Explain any TWO methods by which an exemption clause can be incorporated into a contract. (6 marks)
- B. Assess whether the *Hamptons County House Hotel and Spa* can rely on this exemption clause to avoid liability from Cassidy's claim. (2 marks)
- C. Assuming that the clause is part of Cassidy's contract, outline whether the *Fundamental Breach Rule* of construction of an exemption clause would or would not allow the *Hamptons County House Hotel and Spa* to escape liability in this situation. (2 marks)

Total 10 Marks**QUESTION 9**

- A. In the context of employment law, describe any FIVE methods by which a contract of employment can be terminated. (5 marks)
- B. In relation to the law on unfair dismissal, outline the TWO main eligibility requirements to initiate a claim (2 marks), and explain the THREE remedies for unfair dismissals (3 marks). (5 marks)

Total 10 Marks**QUESTION 10**

- A. Last year Griffin was admitted to hospital following a house fire. As a consequence of his exposure to smoke, Griffin was prescribed medication to prevent further damage to his lungs. Before taking this medication, the risks of this new treatment were explained to him and Griffin signed a form consenting to the treatment. Last month Griffin collapsed in work complaining of a sharp pain in his left leg. On admission to hospital he was diagnosed with a blood clot. It now transpires that the blood clot was caused by the medication he was prescribed for his smoke exposure. Griffin has now written to the hospital and informed them that he is considering suing the hospital for negligence. On receipt of his letter the hospital contacted Griffin and told him that they plan on invoking a defence of voluntary assumption of risk in respect of his claim.

Discuss the nature of this defence and assess the potential impact of this defence on Griffin's claim.

(4 marks)

- B. Reynolds stole a car. While driving this car he saw his girlfriend Avery. He stopped the car and asked Avery if she wanted to go for a midnight drive. Avery asked Reynolds where he had gotten the car from and he told her that if someone was stupid enough to leave the keys in the car then they deserved to have their car stolen. Avery laughed and got into the car with Reynolds. Later that evening Reynolds got into a high speed chase with the Police who recognised that the car had been reported as stolen. During this chase, Reynolds collided with another vehicle and then smashed the car into a wall. Reynolds suffered only minor injuries in this incident, but Avery's spine was crushed causing her paraplegia.

Avery's family is now considering suing Reynolds for negligence, but their solicitor has informed them that any claim is likely to be countered by a defence of illegality.

Discuss the nature of this defence and assess the potential impact of this defence on Avery's claim.

(4 marks)

- C. In the context of remedies in tort actions, explain the concept of "punitive/exemplary damages". (2 marks)

Total 10 Marks

QUESTION 11

Late one evening last month, a door-to-door salesman for *Kitchen Haven* called to Casey's home. The salesman was selling pressure cookers and when Casey told him that she wasn't interested and that she was putting her three-year old son to bed, he pushed his way into her home and told her that he would set up a demonstration for her while she took her son upstairs and put him to sleep. When Casey came down the stairs ten minutes later the salesman then proceeded to do a thirty minute presentation on the use of the pressure cooker and its benefits. At many points during the presentation Casey told the salesman that she had no interest in purchasing this item, but he proceeded with the demonstration nonetheless. After the demonstration Casey again told the salesman that she had no interest in purchasing this item, but he told her that as she had wasted thirty minutes of his time that he was not leaving until she agreed to purchase a pressure cooker. Anxious to get him to leave, as her son was crying upstairs, she agreed to buy a pressure cooker. Two days later the pressure cooker was delivered to Casey as well as an invoice for £200. Casey has since contacted *Kitchen Haven* telling them that she has changed her mind and wants to return the item. *Kitchen Haven* then contacted Casey and told her that they operate a strict no refunds policy and that all sales are final.

Casey has now contacted you for advice on this matter.

- A. Define an "aggressive practice" under the Consumer Protection From Unfair Trading Regulations 2008. (2 marks)
- B. List any TWO factors taken into consideration by the Court in determining whether a sales practice is aggressive. (2 marks)
- C. Assess whether you consider that the actions of the salesman acting on behalf of *Kitchen Haven* amount to an aggressive practice, providing reasons for your answer. (2 marks)
- D. If *Kitchen Haven* is found guilty of engaging in an aggressive practice discuss the penalties that can be imposed upon the company and its officers. (2 marks)
- E. State any TWO powers of the Enforcement Officers of the Department of Trade, Enterprise and Investment. (2 marks)

Total 10 Marks

1st Year Examination: August 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 1:

- A. Money Laundering: criminals turn cash into other assets to disguise original source- conceals or disguises the nature source, location, movement and ownership of criminal property- converts it into one form into another – transfers or removes from outside jurisdiction. **(2 marks)**
- B. Three offences include- (1) laundering- involves placement, layering, and integration (2) failure to report- if you suspect or know that someone is laundering money you must report them to the authority; (3) tipping off- it is an offence to tip someone off that a report has been made about them on suspicion of money laundering **(each offence 1 mark)**
- C. Safeguards: (1) ensure compliance with external professional rules, legislation and regulations – this can be achieved by education, training and continuing professional development, and (2) operating proper internal control safeguards – such as regularly training employees in professional ethics and imposing sanctions for breaches **(2 x 2 marks = 4 marks)**
- D. Rights of a Member at the Disciplinary Tribunal: (1) to attend and be heard, (2) to be represented (by legal counsel or a member of Accounting Technicians Ireland), (3) to receive any material regarding the complaint from Accounting Technicians Ireland in advance of the hearing, (4) to cross-examine witnesses, (5) to adduce documentary evidence, (6) to call witnesses, and (7) to make any submission that they desire **(any 5 x 1 mark = 5 marks)**
- D.(1) Time Limit for an Appeal: 21 days **(1 mark)**
- D.(2) Grounds for Appeal: (1) the finding is wrong, (2) the Order is excessive, (3) the finding and/or the Order is flawed because of a serious procedural irregularities or other irregularities in the proceedings before the Complaints Committee or Disciplinary Tribunal, and/or (4) the award of costs against the member is manifestly excessive **(any 2 x 1 mark = 2 marks)**
- D.(3) Outcome of Appeals Committee: (1) they can affirm, vary or rescind any finding or Order of the Disciplinary Tribunal in respect of which the appeal was brought, (2) they can substitute any other finding or Order which the Disciplinary Tribunal might have made on the original formal complaint, (3) they can order that the formal complaint that resulted in the finding or Order of the Disciplinary Tribunal, in respect of which the appeal was brought, be heard *de novo* by a different Disciplinary Tribunal, or (4) they can make an order for costs **(any 2 for 0.5 marks = 1 mark)**
- E. Conclusion: that Parker is: (1) in breach of his duty of objectivity by not disclosing that *Booth Industries* is in fact owned by Parker's brother, (2) in breach of his duty of objectivity and professional behaviour by not disclosing the cash gift of €10,000, and (3) in breach of his duty of professional competence, due care and skill by not determining that there were in fact cheaper alternate suppliers **(any 2 x 1 mark = 2 marks)**

Solution 2:

Differences Between Public Limited Companies and Private Limited Companies	
(1) Subscription	Company membership: private company at least one member and member can also be director; public- must be at least one member and two directors
(2) Capital	A public company must have a minimum issued share capital of £50,000 – 25% of which must be fully paid, whereas a private company has no minimum requirements
(3) Trading	Upon receipt of the Certificate of Incorporation a private company can commence trading – whereas a public company can only trade upon receipt of a trading certificate from the Companies Registry (this document evidences everything about the company that makes it public)
(4) Transfer of Shares	A public company can sell its shares freely on the market – whereas there is a prohibition against offering shares to the public in a private limited company
(5) Stock Market	A public limited company can be listed on the stock market whereas a private company cannot
(6) Registration	In a public limited company the application for registration must state that it is a public limited company, whereas in a private limited company the application for registration must state that it is a private limited company
(7) Secretary	Public companies must have company secretary- private companies do not have to have one
(8) Accounts and Audits	Public companies must produce accounts within 6 months of annual year ending whereas private companies must do so within 9 months; audits- some private companies exempt whereas all public companies have audits

(any 5 x 2 marks = 10 marks)**Solution to Question 3**

- A. Share: a share represents an investment in a company – it was defined in *Borland's Trustee v Steel Bros & Co Ltd (1901)* as "... the interest of the shareholder in the company, measured, for the purposes of liability and dividend by a sum of money" **(1 mark)**
- B. Partly-Paid Shares: Shannon has inherited partly-paid shares in *Rosen Enterprises Plc* – this is where shares are purchased and the full nominal value of the shares is not paid for upon subscription – but where a portion is paid upon subscription and the balance is due at a later date – the paid-up amount is reflected on the balance as paid-up/called-up issued share capital – the unpaid portion is reflected as unpaid capital/reserve capital (where the unpaid portion is reserved exclusively for liquidation purposes) – payment is required at either a pre-agreed future date or upon liquidation of the company (whichever arises first) **(3 marks)** – if the date for payment arrives and a call is made for payment or if the company goes into liquidation then Shannon is obliged to pay the unpaid portion ($100,000 \times £0.80 = £80,000$) **(1 mark)**
- C. Shares at a discount: there is a general prohibition in company law in relation to issuing shares at a discount and this act affects the integrity of the capital account **(1.5 marks)** – there are two exceptions to the rule: (1) where the discount arises as a consequence of paying any commission on the issue of shares, and (2) where shares are issued for non-cash consideration (provided there is an independent valuation of the asset if the company is a public limited company) **(2 marks)** – Shannon would only be liable to repay the discounted portion of the shares if she purchased then knowing that they were discounted – as she has inherited the shares in *Buttercup Designs Ltd* she will have no future liability, and the company and its officers will be liable for the discount, plus commission **(1.5 marks)**

Solution 4:

- A. Executive Directors – these are 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 – these are 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

Solution 4 (Cont'd)

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 **(2 marks)**

- B.(1) Loans to Directors/Rule: There is a prohibition against loans/quasi loans/credit transactions and guarantees from a company or its subsidiaries to a Director or any connected person unless a resolution has been passed by the members approving the loan **(2.5 marks)**
- B.(2) Exceptions to this prohibition: (1) where the loan is less than £10,000 or (2) expenditure relating to criminal or civil proceedings taken against director (3) the advancing of money to a Director for reasonable business expenses provided less than £50,000–(4) expenditure relating to action taken against director by regulatory authority **(any 2 = 2 marks)**
- B.(3) Sanctions for breach only civil no criminal (1) contract is voidable (unless restitution is not possible) – (2) the officer may be accountable for any personal gains or (3) he may be required to indemnify the company against losses – **(any 3 = 1.5 marks)**

Solution 5:

- A. Resolutions: the main differences between ordinary and special resolutions are: (1) how it is passed (ordinary requires a majority – whereas a special requires 75%), (2) registrar (some ordinary do not need to be registered whereas all special must be delivered to the Companies Registry within 15 days, otherwise the company is liable to the imposition of a fine) **(4 marks)** – Matters to be voted on (ordinary: (a) election or re-election of directors, (b) the appointment of an auditor, (c) the remuneration of auditors (d) removal of auditor or director (e) declaration of dividends **(any 1 of each = 1.5 marks)**
- B. Members or Directors **(2 marks)**
- C. Decision to remove director or auditor before the expiry of their term **(2 marks)**

Solution 6:

- A. Powers of a Liquidator: (1) pay any class of creditors in full (2) make any compromises or agreements with creditors (3) bring or defend any legal proceedings in name or behalf of company (4) power to carry on business in so far as it is beneficial for company (5) power to sell any of the company property including good will and bank debts (6) power to execute deeds receipts and other documents in the name of the company (7) power to raise on the security of the assets of the company (8) power to appoint an agent in place of liquidator to do business (9) power to do all necessary things for winding up company's affairs and distributing assets **(any 8 x 1 mark = 8 marks)**
- B. Termination (1) compulsory or voluntary liquidation- removed from office by High Court or released from office by creditors (voluntary-shareholders) after final report at general meeting (2) no longer qualified to hold position (3) resigns **(any 1 = 1 mark)**

Solution 7:

- A.(1) Magistrates Court : this Court deals with summary offences' (minor offences) – such as road traffic offences, public order offences, littering, loitering, shoplifting etc – in general the maximum sanction that can be imposed by the court is a 18 months imprisonment and/or a fine not exceeding £5000– it can also hear some indictable offences – where they are tried summarily (where the accused has waived his right to trial by jury, the offence is relatively minor, and the PPS consents)- Magistrate sits alone with no jury **(2 marks)**

- A.(2) Youth Court: This Court hears cases where defendant is between 10-17 years of age. The Magistrate sits with two lay Magistrates. There is no jury and restricted access to protect privacy. (2 marks)

Solution 7 (Cont'd)

- A.(3) Crown Court: This Court hears all more serious crimes that are not heard in the Magistrates Court – such as murder, rape conspiracy and robbery- the proceedings will commence with the arraignment of the accused where he will plead guilty or not guilty- there is a judge and a jury- hears appeals from Magistrates court (2 marks)
- A.(4) Court of Appeal: This court is highest appellate court in NI- divided into 2 sections- crime and civil- can hear appeals from Crown Court- Court may appeal and acquit defendant; reduce or vary sentence; dismiss appeal (2 marks)
- B. Criminal Sanctions: (1) fines, (2) imprisonment, (3) Community Service Orders, (4) Probation Orders (4 x 0.5 marks = 2 marks)

Solution 8:

- A. Incorporation of an Exemption Clause: (1) this may arise by signature: where the injured party has signed the contract containing an exemption clause – if the injured party signs without reading the contract, the clause will still be considered validly incorporated into the contract - *L'estrage v Graucob (1934)*, - it may also arise in an unsigned written contract, provided the notice is prominently displayed and the clause is not hidden amongst a mass of other printed material, (2) by reasonable notice: a party to a contract that contains an exemption clause must be given reasonable notice of the clause either before or at the time of entering the contract, not after – when determining whether reasonable notice was given the courts will have regard to all the circumstances and take into account factors, such as when the notice was given, what form the notice was given in and how serious the effect of the limitation or exemption has on the injured party - *Chapelton v Barry Urban District Council (1940)*, *Thornton v Shoe Lane Parking Ltd (1971)* or (3) by a course of dealing: even if insufficient notice of the exemption clause has been given, the courts may still determine that the clause is validly incorporated if the parties have had previous dealings on a regular/consistent basis with each other – *Spurling Ltd v Bradshaw (1956)*, *Rambler Motors (1972)* (any 2 x 3 marks = 6 marks)
- B. Validity of the Clause: it is unlikely that this clause will be deemed valid by the Court as it was only brought to Cassidy's attention after she entered into the contract – it was not brought to her attention either before or at the time she made the booking – and as she is not a regular customer – it cannot be incorporated by a course of dealing (2 marks)
- C. Construction: the fundamental breach rule states that an exemption clause will be invalid if the party seeking to uphold it has committed a fundamental breach of contract or where it attempts to exclude a core obligation of the contract (1 mark) – conclusion that this clause is automatically invalid as it is trying to exclude all core contractual obligations, therefore the *Hamptons County House Hotel and Spa* cannot use this clause to escape liability in this situation (1 mark)

Solution 9:

- A. Discharge of an Employment Contract: (1) Performance – where the employee carries out their duties and receives remuneration – such as in a fixed term contract, (2) Agreement – where both the employer and employee agree to terminate the contract, (3) Breach – where one of the parties to the contract commits a fundamental breach of contract, (4) a Frustrating Event – where an action beyond the control of the contracting parties means that the employment contract cannot be completed as agreed – such as a fire in a timber manufacturer, (5) Breach of contract- one party breaches term e.g. implied term of confidentiality (6) Notice – either specified by legislation or as stated in the contract, (7) Dismissal – in accordance with fair procedures and proper notice and where substantive grounds exist, or (8) Redundancy – where the position for which the employee was hired no longer exists or does not exist in the same way or in the same location, or where the demand for labour has diminished (any 5 x 1 mark = 5 marks)

- B. Eligibility Requirements for Unfair Dismissal: (1) an employee with more than one year's service (except where dismissal results from maternity, trade union membership, or exerting the minimum wage), (2) a person employed under a contract of service **(2 = 2 marks)**

Solution 9 (cont'd)

- Remedies: (1) reinstatement – employee restored to position (2) re-engagement- given different role (3) compensation which includes a basic, compensatory and special award. **(any 3 for 1 mark each = 3 marks)**

Solution to Question 10

- A. *Volenti non fit injuria*- Consent to run the risk: this defence arises where the injured party is assumed to have consented to harm inflicted by way of negligence, nuisance, trespass etc – willingly agreed or consented to take part in action that he knew carried a risk- plaintiff must have been free to make choice- i.e. not coerced- *Morris v Murray (191)*; *Pitts v Hunt (1990)* **(3 marks)** – conclusion that the Court is likely to allow the defence as Griffin consented to the risk of injury by voluntarily signing the consent form – wherein the risks were explained to him – this will mean that his claim for damages is likely to be unsuccessful **(1 mark)**
- B. Illegality: this defence is based on the rule that no action can be found based on a wicked/illegal act – the reasoning behind the rule is a public policy objection in allowing a person engaged in illegal activity to sue for injuries arising from that activity (although it is important to note that not all illegal acts will bar a claim) – examples include: *Cummings v Granger (1971)*, *Revill v Newberry (1996)* **(3 marks)** – this case is very similar to *Ashton v Turner (1981)* and based on that case it is likely that the Court allow the defence as Avery knew that she was involved in criminal activity (joy-riding) and there is no duty of care owed between participants in criminal activity for acts committed in furtherance of that activity – therefore her claim is likely to fail **(1 mark)**
- C. Punitive/Exemplary Damages: these are damages awarded in cases where the Court strongly disapproves of the defendant's behaviour and wishes to punish the defendant for this behaviour – they are rarely awarded as the purpose of damages is compensation not punishment – but may arise in cases such as defamation or gross negligence **(2 marks)**

Solution 11

- A. Aggressive Practice: this is defined as a practice that: (1) reduces consumers freedom of choice, and (2) causes the average consumer to make a different economic decision **(2 = 2 marks)**
- B. Factors: in determining whether a practice is aggressive the Court takes into consideration: (1) the language used by the trader, (2) the timing of the contract, and (3) the location of the contract (4) tactics employed by seller e.g. door to door sales man calling at night **(any 2 = 2 marks)**
- C. Conclusion: the actions of *Kitchen Haven* amounts to an aggressive practice as harassment, coercion or undue influence were exercised by the salesman in order to pressurise Casey into creating a contract **(2 marks)**
- D. Penalties: a fine not exceeding £5,000 and/or up to 24 months imprisonment **(2 marks)**
- E. TWO powers of the Enforcement Officers of the Department of Trade, Enterprise and Investment: (1) enter and inspect premises (2) make test purchases (3) seize and detain goods (4) break open any container or vending machine (5) require trader to produce documents **(any 2 = 2 marks)**

Accounting Technicians Ireland

Examiner's Report Examination: August 2013 Law & Ethics (NI)

Statistical Analysis – By Question

Question No.	1	2	3	4	5	6	7	8	9	10	11
Average Mark (%)	53%	83%	36%	54%	47.5%	66%	69%	35%	72%	29%	46%
Nos. Attempting	42	39	26	38	20	38	35	29	41	29	21

Statistical Analysis - Overall

Pass Rate	71%
Average Mark	53.5%
Range of Marks	Nos. of Students
0-39	6
40-49	6
50-59	18
60-69	6
70 and over	6
Total No. Sitting Exam	42
Total Absent	18
Total Approved Absent	1
Total No. Applied for Exam	61

General comments:

The standard overall was very good with the majority of candidates attaining a pass mark and a number of these students gained a merit grade.

Students generally performed well in questions 2 and 6 Section B (company law) and in questions 7 and 9 from Section C (General Law). The compulsory question (Question 1) was quite 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 poor.

Nearly all candidates, who did not achieve a pass grade answered at least one question which achieved a pass mark. This proves that all candidates sitting this paper have the ability to pass the exam. Each candidate should put in the extra time and effort into their revision to ensure that they can achieve a pass grade.

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.

Each year there are some papers which are 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):

The majority of students provided satisfactory answers and some students gained full or nearly full marks. Some students did not score well and did not display a basic understanding of the offence of money laundering. Candidates must learn both chapters 16 and 17 as the question will require you to have knowledge from both chapters. Marks were lost generally due to the following:

- A. Students provided a description relating to the problem question rather than giving the standard definition of the offence as contained in Chapter 17 of the course manual.
- B. Students were not able to list all three offences relating to money laundering specifically and listed other corporate offences instead.
- C. Students referred to the principles of the Code of Ethics and not to the specific safeguards.
- D. Students were generally able to provide at least three rights that Parker would have.
- E. Students generally were not able to provide a correct time limit. A number of students stated that a possible outcome was imprisonment. Accounting Technicians Ireland do not have this power- students who made this mistake would need to revise the basic principles of chapter 7 again.
- F. Students correctly concluded that there was a breach but some students correctly identified the specific principles that had been breached..

Section B: Company Law

Question 2:

The vast majority of students who attempted this answer passed this question. This was the best answered question on the paper. Students were able to provide a table identifying all the relevant differences.

Question 3:

The majority of students who attempted this answer did not pass and students in particular failed to answer parts B and C correctly.

- A. Generally all students were able to define a share correctly.
- B. Many students incorrectly identified the shares purchased as preference shares and discussed the characteristics of preference shares.
- C. Some students were not familiar with the rules in relation to issuing shares at a discount. More revision is required of this area.

Question 4:

Generally quite well answered but more revision of this topic is required.

- A. The vast majority of students were able to explain the differences in sufficient detail.
- B. Many students were not familiar with the rules in relation to director's loans and therefore were unable to answer the different parts of this question correctly.

Question 5:

This question was reasonably well answered but some weak answers for Part A.

- A. A significant number of students could not identify the basic difference between the resolutions and were unable to give relevant examples
- B. Most students answered this correctly.
- C. Many students provided incorrect examples.

Question 6:

This was generally well answered but students lost marks due to insufficient knowledge of the topic..

- A. Students lost marks as there were unable to provide at least 8 powers or duties.
- B. Some students were not able to give two methods of terminating the appointment.

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

This question was not as well answered as in the past but the majority of students who attempted this question passed this question.

- A. Many answers proved that students do not have a thorough understanding of the court structure. Simple mistakes were made such as stating that a jury is present in the Magistrates court.
- B. Nearly all students correctly identified four criminal sanctions.

Question 8:

The answers provided to this question were generally quite weak, especially to Part A.

- A. Many students could identify methods of corporation but were unable to go into any detail.
- B. Generally students correctly concluded that the clause would be considered invalid but did not provide any reasons. Full marks were awarded to students who provided reasons.

- C. As with (B) above generally students correctly concluded that the clause would be considered but failed to provide any reasons.

Question 9:

This question was generally very well answered and some students scored full marks.

- A. Students lost marks for failing to provide at least 5 reasons..
- B. Students failed to correctly identify the eligibility criteria and incorrectly referred to reasons for unfair dismissal. All students could identify the three remedies.

Question 10:

This question produced the weakest answers on the paper.

- A. Students were able to correctly guess the potential outcome but were not able to accurately describe the defence in any detail.
- B. As with section (A) students were able to correctly guess the potential outcome but were not able to accurately describe the defence in any detail.
- C. Most students could not identify the concept of punitive damages and provided wholly incorrect answers.

Question 11:

This question produced some very disappointing results. This question tested the students' knowledge of European Consumer Law, which students had clearly not revised. Students used the facts of the question to guess the answers and did not display a basic knowledge of the law in this area. Students scored very poorly in parts (D) and (E).