
Law & Ethics **Northern Ireland**

1st Year Examination

August 2012

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.

This publication is copyright 2012 and may not be reproduced without permission of Accounting Technicians Ireland.

© Accounting Technicians Ireland, 2012.



Accounting Technicians Ireland
1st Year Examination: Autumn Paper 2012

Paper: LAW & ETHICS (NI)

24th AUGUST 2012 - 9.30 a.m. to 12.30 p.m.

INSTRUCTIONS TO CANDIDATES

For candidates answering in accordance with the law and practice of 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

Sam is employed as a new accounts manager with the Belfast Savings Bank and is also a qualified member of Accounting Technicians Ireland. Three months ago she was called to a meeting with the branch manager of the bank and asked to open a new account for an existing corporate client, who is listed on the London Stock Market. The account was in a different name than the client's normal company name and when Sam questioned this the branch manager told her that the client was about to become involved in a joint venture with an American multinational company and this account was to be in the name of the new subsidiary formed exclusively for that purpose.

As Sam had a large amount of personal debt she decided to buy shares in the client company, knowing that she could sell these shares at a significantly higher price when the joint venture became public knowledge. The client company made the announcement of the joint venture last week and Sam, who had bought 5,000 shares at £1.50, sold her shares for £3.20, making her a personal profit of £8,500 on the transaction. Unfortunately, the branch manager became suspicious when Sam lodged the £8,500 into her personal account at the bank, as the cheque was in the name of the client company. Sam was called to a meeting and suspended on full pay pending an investigation of the matter.

In the course of this investigation the Belfast Savings Bank discovered what had occurred, as Sam had used the bank's email system to contact a broker for the purpose of buying and selling the shares. The Bank have dismissed Sam for gross misconduct and have reported her to the Police alleging that she has been involved in insider dealing. They have also reported her to Accounting Technicians Ireland alleging that she has breached their Code of Ethics.

- A. Discuss the elements of the offence of insider dealing, and determine whether Sam is guilty of this offence. Comment also on the sanctions likely to be imposed upon Sam if she is found guilty of insider dealing.

12 Marks

- B. Explain any THREE of the five fundamental principles of the Accounting Technicians Ireland Code of Ethics in order to achieve the objectives of the profession (**3 x 2 marks**).

6 Marks

- C. Outline any FOUR sanctions that can be imposed upon Sam by the Complaints Committee of Accounting Technicians Ireland, if they determine that Sam has breached their Code of Ethics.

2 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

Lloyd, Chloe and George have been running a printing business as a partnership for the past three years. In January 2012 Lloyd discovered that George had been purchasing paper on behalf of the partnership from a company owned by George's father and paying an inflated price for this paper (2% higher than the normal market price). When Lloyd confronted George about this George admitted his actions but said that he was just doing his father a favour and didn't understand why this was an issue. An argument ensued between the partners and Lloyd told George that he was retiring from the partnership with immediate effect. Chloe consented to Lloyd's retirement and agreed to purchase his share of the partnership.

Last month the partnership was dissolved on the basis of insolvency. At the point of dissolution the assets of the partnership were worth £800,000 but the debts of the partnership were £1.3m. Some of this debt includes a business loan taken by the partnership from the partnership bank in April 2012 in the amount of £200,000.

- A. List any TWO statutory duties owed by partners in a partnership and assess whether George has breached his duties to the partnership by purchasing paper at an inflated price from his father's company.

3 Marks

- B. Outline the liability of a retiring partner for the debts of the partnership and determine whether Lloyd has any liability in respect of the £200,000 borrowed by Chloe and George from the partnership's bank in April 2012.

7 Marks

Total 10 Marks

QUESTION 3

Draw a table comparing the characteristics of both ordinary shares and preference shares under any FIVE headings.

Total 10 Marks

QUESTION 4

- A. List any THREE persons not qualified to act as a company director.

3 Marks

- B. Staunton is a director of *Archway Foods Ltd*. The company has recently been looking to expand and in this regard they have been searching for new business premises. At a recent board meeting of the company Staunton showed the other directors an auctioneer's brochure of a property that had become available in Coleraine town that could suit their needs. The directors made an appointment to view this property and following this viewing they made an offer to buy the property that was accepted by the vendor company

Subsequent to this acquisition it has come to the attention of the Board of Directors of *Archway Foods Ltd* that Staunton's son is the majority shareholder in the company who sold these premises, and that Staunton himself is a minority shareholder in this company. At no time during the negotiations of the purchase did Staunton reveal his own or his son's interest in this company. The Board is now considering removing Staunton on the basis that he breached his statutory duty to the company in relation to the non-disclosure of this substantial property transaction. Staunton is arguing that the company made its own decision to purchase the premises after viewing the property and therefore that he has done nothing wrong.

- (1) Define the nature of a substantial property transaction and discuss the obligations imposed upon directors where they are engaged in a substantial property transaction with the company.

5 Marks

- (2) Determine whether Staunton has breached his duties to the company in this situation and the likely penalties that could be imposed.

2 Marks**Total 10 Marks****QUESTION 5**

Creative Knitwear Ltd has recently been incorporated as a private limited company and Rachel and Bonnie have been appointed as the company's executive directors. Rachel has agreed to take responsibility for ensuring that the company is maintaining proper books of account and financial records. In this regard she seeks your advice as follows:

- A. When is the company obliged to lodge an annual return with the Registrar of Companies?

3 Marks

- B. What requirements do the company have to fulfil in order to obtain an audit exemption?

3 Marks

- C. What accounting records does the company have to prepare each year, and how long do these accounts need to be maintained for?

4 Marks**Total 10 Marks**

QUESTION 6

The entire assets of *Snowflake Ceramics Ltd* have recently been purchased by *Festive Designs Ltd* and following this purchase the directors of *Snowflake Ceramics Ltd* have been left with a surplus profit of £750,000 and no liabilities. The Directors of *Snowflake Ceramics Ltd* have decided to effect a member's voluntary liquidation of the company, in order to distribute this profit to the company's shareholders

- A. State the pre-requisite requirement to effect a member's voluntary liquidation of *Snowflake Ceramics Ltd*.

1 Mark

- B. Discuss the procedure that must be followed to effect a member's voluntary liquidation of *Snowflake Ceramics Ltd*.

9 Marks

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

A. Outline the civil jurisdiction of the Small Claims Court (**2.5 marks**), the County Court (**2.5 marks**) and the High Court (**3 marks**) in Northern Ireland.

8 Marks

B. Explain the jurisdiction of the Commercial Court.

2 Marks

Total 10 Marks

QUESTION 8

Grethen recently purchased an airline ticket with *Bluesky Airways* to fly from Dublin to Belfast. In Belfast she planned on catching a connecting flight to Singapore with *Asian Atlantic Airways*. When booking the flight with *Bluesky Airways* she left six hours between the flights estimated arrival time and the departure of the Singapore flight. Unfortunately on the day of the flight the Dublin to Belfast flight was grounded due to severe snow in Dublin, and by the time Grethen managed to get a train to Belfast she had missed her flight to Singapore.

A. Outline any THREE methods by which a contract can be discharged and state the method of discharge that has arisen in the context of the contract created between Grethen and *Bluesky Airways*.

4 Marks

B. Grethen is considering suing *Bluesky Airways* for the costs/losses she incurred as a consequence of missing her flight from Belfast to Singapore. The value of this loss is estimated at £860 – as this is what it cost Grethen to book a seat on the next available flight to Singapore. Discuss the main factor the Court will take into consideration in determining whether this loss is recoverable and determine the potential success or otherwise of Grethen's potential claim against *Bluesky Airways* for this £860.

6 Marks

Total 10 Marks

QUESTION 9

Ruth commenced employment as a trainee accountant with Diamond Accountants two years ago. She is now nearing the end of her training contract and to date she has had an excellent work history with the firm. Unfortunately an incident occurred at last week's Summer barbeque that has impacted Ruth's position with the firm. At this party Ruth, who normally drinks only in moderation, got obnoxiously drunk on champagne. This champagne was given to her by the firm's managing partner as a gift for passing her final accountancy exams. While drunk she knocked over a table, which landed on a client's foot breaking all of his toes. An ambulance was called and the client was taken to the hospital for medical treatment.

When Ruth woke up the following morning she was mortified when she remembered what had happened. She rang the managing partner of the firm to apologise for this incident. He accepted her apology but told her that he would have to discuss this incident with the other partners in the firm.

This week Ruth was called to a meeting with the managing partner in the firm and informed that she was being dismissed with immediate effect for her gross misconduct at the barbeque, which had resulted in the firm losing the injured client's business.

Ruth considers her dismissal unfair and has come to you seeking advice.

- A. Outline any SIX grounds upon which a dismissal is automatically presumed to be unfair. **3 Marks**
- B. Outline the main grounds upon which a dismissal is automatically presumed to be fair. **5 Marks**
- C. Determine whether you consider Ruth's dismissal to be fair or unfair, providing reasons for your answer. **2 Marks**

Total 10 Marks

QUESTION 10

Victoria was recently admitted to hospital following a road traffic accident. Victoria was alert and conscious when she was admitted to the accident and emergency (A&E) department of the hospital and she told the doctor who admitted her that her blood type was AB negative. An A&E nurse and Victoria's husband were with her when she gave this information to the attending doctor. Following her admission Victoria's medical condition worsened and she was rushed to theatre for emergency surgery.

During this surgery she began to bleed out and consequently she required a blood transfusion. Unfortunately, due to an error by the admitting doctor Victoria was given AB positive blood, as this was the blood type that was stated in her admissions records. Following the transfusion Victoria had an extreme reaction which caused her heart to stop beating. By the time the surgeon managed to revive her heart her brain had been deprived of oxygen for twenty minutes and Victoria could not be resuscitated from the anaesthetic. Last week the hospital informed Victoria's husband that she was brain dead and he agreed to turn off the life support machines that were keeping her body alive.

Victoria's husband is now considering suing the hospital for the fatal injuries to his wife arising from the hospital's negligence.

In the context of negligence, explain the various factors that the Court will take into consideration in determining whether there has been a breach of the standard of care by the hospital.

Total 10 Marks

QUESTION 11

- A. Define an agent, and explain the TWO main classifications of agents, providing an example of each. (5 marks)
- B. Alex has been renting a house in Lisburn City from Maxwell for the past five years. Two weeks ago the river adjacent to Alex's house burst its banks and flooded the ground floor of the house. Alex attempted to contact Maxwell to explain what had happened but Maxwell's phone kept going to a message which stated that the phone was out of coverage at that time and no message could be left. Since this incident Alex had tried to call Maxwell every day but has kept getting the same message. In the interim Alex hired a number of different contractors to pump the water out of the house and to remove the rotten floorboards and flooring. To date Alex has paid these contractors £800.

Yesterday Alex received a phone call from Maxwell, who explained to Alex that he had been on holidays in Alaska and that his phone was out of coverage for the entire duration of the trip. Upon his return he noticed fourteen missed calls from Alex and he was now calling to follow up on these calls. Alex explained to Maxwell what had happened and told him that he would be forwarding him the bill for the £800 he had spent in remedying the flood damage to the house. Maxwell refused to pay this bill on the basis that he never authorised Alex to hire these contractors. Alex is contending that he acted as Maxwell's agent out of necessity and that therefore this £800 is recoverable.

Discuss the concept of agency by necessity and determine whether an agency of necessity has arisen between Alex and Maxwell and whether Alex can recover the £800 from Maxwell.

5 Marks

Total 10 Marks

1st Year Examination: August 2012

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. Insider dealing: definition and overview of the prohibition against insider trading – effect of abuse of price sensitive information on share prices – artificiality – manipulation – effect on the integrity of the stock market **(1 mark)** – action is regulated by the Proceeds of Crime Act 2002: **3 offences**- (i) insider is in possession of inside information and uses that information to deal in securities (ii) uses the information to encourage someone else to deal in securities (iii) is in possession of information and discloses that information: Meaning of insider: (i) primary- person who has information from an inside source e.g. obtain information through their employment and are usually directors or employees or company advisors (ii) secondary – a person who receives the information that has not been made public from an inside source of inside information. Definition of inside information: (i) specific or precise- indicates circumstances or events that exist or reasonably expected to occur/ specific enough to enable conclusion to be drawn as to the effect of the circumstances on the price of the securities (ii) information not yet made public- either published or readily acquired (iii) information relating to particular issuer of securities or the securities themselves (iv) information that if made public would have significant effect on price of securities

(7 marks) – penalties for breach of the legislation: civil liability – compensation to any party to the transaction who sustained a loss; and an account to the company for all unlawful profit made,- criminal liability – on conviction a term of imprisonment not exceeding 7 years and/or an unlimited fine; **(2 marks)** – conclusion that both Sam is guilty of insider trading – as she purchased shares when she was in possession of information of a precise nature likely to impact the value of shares **(2 marks)**
- B. Accounting Technicians Ireland Code of Ethics fundamental principles: (1) integrity – this principle requires that the members should be straightforward and honest in all professional and business relationships, **(2 marks)** (2) objectivity – this principle requires that members should be fair and should not allow bias, conflict of interest or undue influence of others to override professional or business judgments, **(2 marks)** (3) professional competence and due care – this principle requires that members have a continuing duty to maintain professional knowledge and skill at a level required to ensure that a client or employer receives the advantage of competent professional service based on current developments in practice, legislation and techniques. Members are required to act diligently and in accordance with applicable technical and professional standards when providing professional services, **(2 marks)** (4) confidentiality – this principle requires that members should respect the confidentiality of information acquired as a result of professional and business relationships and should not disclose any such information to third parties without proper and specific authority or unless there is a legal or professional right or duty to disclose. Confidential information acquired as a result of professional and business relationships should not be used for the personal advantage of the member concerned or third parties, **(2 marks)** and (5) professional behavior – this requires that members should comply with relevant laws and regulations and should avoid any action that discredits the profession **(2 marks)** **(any 3 x 2 marks = 6 marks)**

Solution 1 (Cont'd)

- C. Complaints Committee Sanctions: (1) take no further action against the member, (2) place the member "on probation" for up to two years, (3) make a Consent Order against the member, such as: (a) exclusion or suspension from membership of Accounting Technicians Ireland, (b) a declaration that the person is unfit to be a member, (c) disqualification from examination(s) of Accounting Technicians Ireland (in the case of a student member), or (d) the imposition of a reprimand or a severe reprimand (fine) **(any 4 x 0.5 marks = 2 marks)**

Solution to Question 2

- A. Partner Duties: (1) Duty of Disclosure, (Section 28 PA 1890) all information pertaining to all aspects of the partnership, to any partner or their legal representative, (2) Duty not to Compete, (Section 30 PA 1890) without the consent of the partnership, and (3) Duty to Account (Section 29 PA 1890) for all profits made by them from the use of the firm's property, name or business connections, without the consent of the other partners **(2 x 1 mark = 2 marks)** – conclusion that George has breached his duty by not disclosing his conflict of interest to the partnership, and also his fiduciary duty to act in the best interest of the partnership **(1 mark)**
- B. Liability for Partnership Debts of a Retiring Partner: Section 9 PA 1890 states that partners are jointly liable on foot of all partnership contracts and for any debts of the firm – a retiring partner is liable for any debts due at the time of retirement – unless the remaining partners agree to indemnify the retiring partner against such claims through a contract of novation – this is a tripartite contract involving the retiring partner, the remaining members of the continuing partnership and the existing creditors – under this agreement any liability of the retiring partner is passed to the remaining partners – and creditors effectively give up rights against the retiring partner **(4 marks)** – regarding future partnership debts the retiring partner is not liable provided he notifies third parties (existing customers) of changes in the partnership – and advertises the fact in a national newspaper (such as the The Belfast Telegraph) – otherwise liability based on estoppel applies in respect of the retiring partner **(2 marks)** – conclusion that Lloyd may be liable for the £200,000 borrowed by Charles and George from the partnership's bank in April 2012 if he failed to notify the bank of the fact of his retirement **(1 mark)**

Solution to Question 3

Factors	Ordinary Shares	Preference Shares
1. Risk	Ordinary shareholders (equity shareholders) are the main risk takers in the company as they bear the burden of the company's fortunes and they are the last to be paid upon the liquidation of the business	Preference shareholders are less risky than ordinary shares, but still risky – they are only repaid upon liquidation once all external debt has been satisfied, but are generally paid in priority to ordinary shares
2. Return	Ordinary shareholders are generally only paid dividends following payment to the Preference shareholders (assuming these shares are preferred as to dividends)	Preference shareholders (assuming these shares are preferred as to dividends) are generally paid dividends before Ordinary shareholders
3. Amount of Return	Ordinary shareholders are paid a variable dividend, which varies in accordance with the profit/performance of the company	Preference shareholders are issued with a fixed percentage return on investment – this right is normally cumulative, so if no profit is declared in any particular year, the right to a dividend may accumulate to the next profit period (and up to a maximum period of six years)
4. Capital Return on Liquidation	Ordinary shareholders have the possibility of capital growth on liquidation (this is the right to a share of any available assets upon winding-up (if there are surplus profits on liquidation))	Preference Shareholders have the possibility of capital growth on liquidation – although this right may be restricted based on the provisions of the company's Articles of Association
5. Attendance at Meetings	Ordinary shareholders have shareholder rights, such as access to the minute books, statutory registers and attendance at company meetings	Preference shareholders have shareholder rights, such as access to the minute books, statutory registers and attendance at company meetings
6. Ability to influence company policy	Ordinary Shares are generally voting shares and these shareholders can influence company policy by exercising voting rights at meetings (AGM/EGM) relating to company business	Preference Shares generally have no ability to influence company policy as they have no voting rights

- (any 5 x 2 marks = 10 marks)

Solution to Question 4

- A. Ineligibility: (1) a person unfit to be a director (2) a bankrupt person, (3) a person guilty of fraud (4) guilty of misconduct in connection with companies (5) a person subject to a Disqualification Order **(any 3 = 3 marks)**
- B. (1) Substantial Property Transaction:- this can be defined as the purchase by a the company of a non-cash asset from a director/connected person or the acquisition by a director of a non-cash asset from the company – whose value exceeds £100,000 or 10% of the company's assets – in this situation before the acquisition can take effect the company must obtain approval to proceed with the transaction by an ordinary resolution of its shareholders – the Director must disclosure the conflict to the Board at the meeting where the contract is proposed or the first meeting after he becomes interested **(5 marks)**
- B. (2) Conclusion: Staunton has breached this duty as he did not disclose his holding in the vendor company and failed to get approval for the transaction by an ordinary resolution of the shareholders – Staunton's failure to comply would leave him liable to a fine and to account for any personal gain from the transaction, and to indemnify the company for any loss suffered – such a breach may also lead to a possible disqualification order against Staunton **(2 marks)**

Solution to Question 5

- A. Annual Return Date (ARD) –the company's annual return date is the anniversary date of the company's incorporation or the anniversary of the date the previous annual return was made- therefore the ARD of *Creative Knitwear Ltd* is its date of incorporation and the annual return must be delivered to the Registrar of Companies each year within 28 days of that date **(3 marks)**
- B. Audit Exemption Requirements: (1) For small private companies only (exemption does not apply to public companies/banks/insurance companies) (2) turnover does not exceed £5.6m, (3) balance sheet not exceed £2.8m at the end of its financial year **(3 = 3 marks)**
- C. Accounting Records: a company is under a duty to keep up to date accounting records sufficient to: (1) show and explain the financial transactions of the company, (2) disclose with reasonable accuracy at any time, the financial position of the company, (3) enable the directors to ensure that any accounts required to be prepared comply with the requirements of the Companies Act 2006 – these accounting records include the (1) Balance Sheet/Statement of Financial Position as of the last day of the financial year, (2) a Profit and Loss Account/Income Statement/Statement of Comprehensive Income, (3) the Directors' Report, and (4) the Auditors' Reports – these accounts need to be kept for a minimum period 3 years for a private company and 6 years for a public company **(4 marks)**

Solution to Question 6

- A. Members Voluntary Liquidation/pre-requisites: in order to liquidate by a resolution of the members the pre-requisite is that the company is solvent **(1 mark)**
- B. Procedure: a general meeting must take place at which a resolution is passed to voluntarily liquidate the company – a statutory declaration of solvency must have been completed by the directors to the effect that the company is solvent and will be in a position to pay off all debts arising in the liquidation process and sworn no more than 5 weeks prior to the meeting. The declaration must state that a full inquiry has been made into the affairs of the company and that in their opinion all debts can be paid within 12 months of winding up – **(5 marks)** – at the meeting of the shareholders are asked to pass a resolution to liquidate the company – if this resolution is passed a voluntary liquidator is appointed to sell off the assets, pay the company debts and distribute the residue– the resolution must be delivered to the Registrar within 15 days of passing the resolution **(4 marks)**

Solution to Question 7

- A. Small Claims Court –value of claims less than £2000 – do not have to have a legal representative- if the respondent does not turn up you will win your case automatically- a judgment against you will affect your credit rating- authority to deal with claims for compensation for faulty goods/unsatisfactory services/disputes between landlords and tenants/damage to property **(2.5 marks)**
- County Court –largest civil court – it deals with claims for compensation in contract and civil wrongs where the compensation sought is between £5000- £15000 or in equity £45000– it also deals with landlord/tenant disputes, and has the power to deal with family matters such as divorce (provided matters are not complex) – right to appeal to High Court **(2.5 marks)**
- High Court – this court is divided into three sections- Queen's Bench- largest division actions based in tort or contract with value over £15,000- Chancery- equity matters such as lands and trust or winding up companies and Family–complex divorces or child abduction- right to appeal to Court of Appeal **(3 marks)**
- B. Commercial Court: The Commercial Court is part of the Queen's Bench Division– this Court has the jurisdiction to deal with complex national or international business disputes- involve complex legal or financial matters and cases have a high financial value **(2 marks)**

Solution to Question 8

- A. Methods of Contractual Discharge: (1) performance of contractual obligations, (2) agreement, supported by consideration, (3) notice, as per the terms of the contract, subject to legislation, and what the Court considers reasonable, (4) breach of a contractual condition, and (5) operation of the law (a) death, (b) bankruptcy, (c) insanity, and (d) frustration **(any 3 = 3 marks)** – Grethen's contract has been discharged by a frustrating event (the weather) which was unforeseeable, uncontrollable and prevented performance of the contract **(1 mark)**
- B. Damages: in relation to the quantum of damages recoverable the rule is that the breaching party is only liable to pay damages in relation to losses arising naturally and those that are within the contemplation of the parties – parties will not be compensated for all losses suffered – where the loss is considered 'too remote' from the breach and unforeseeable – any abnormal consequences where the wrong-doer has actual knowledge of these abnormal consequences may be recoverable,

Victoria Laundry Ltd v Newman Industries Ltd (1949) – issue of whether the consequences have been ‘*within the reasonable contemplation of the parties*’ at the time of the contract, The

Solution 8 (Cont’d)

II (1969) (4 marks) – conclusion that on the assumption that Grethen booked two separate flights and that neither airline was aware of the other contract, then the loss is not recoverable as it is unforeseeable – but that if she booked a flight from Dublin to Singapore, with a change in Belfast then the £860 is recoverable as *Bluesky Airways* had actual knowledge and the loss should have been ‘*within the reasonable contemplation of the parties*’ at the time of the contract **(2 marks)**

Solution to Question 9

- A. Unfair Dismissal: any dismissal based on: (1) pregnancy, childbirth, maternity reasons (2) parental/adoption leave (3) time off for dependents (4) requesting flexi working hours (5) exerting employment law rights (6) spent criminal conviction (7) membership of Trade Union (8) enforcing statutory right against employer (9) whistle blowing (10) jury service (11) protected industrial action (12) health or safety reasons (13) employer failed to follow grievance or disciplinary procedures **(any 6 = 3 marks)**
- B. Fair Dismissal: (1) lack of capability/ qualifications/health: capability relates to the ability to perform the required tasks for example, dismissed for failure to meet targets *Winterhalter Gastronom v Webb (1973)* or for one serious act- crash landing *Taylor v Alidair Ltd (1978)* qualifications- relate to either academic, professional, technical, occupational or other qualifications where employee no longer possesses such required to carry out job *Blackman v Post Office (1974)* –Health relates to the health of employee who may be dismissed if no longer able to required job due to health (2) employee misconduct – must follow disciplinary procedures – one serious act of gross misconduct- may result in dismissal/ acts of continuous misconduct (such as absenteeism/tardiness etc) – warning must be given in less serious cases- ultimately dismissal if the behaviour continues, acts of isolated misconduct (not gross) should only warrant a warning and not dismissal and (3) redundancy – where the position no longer exists (downsizing, relocation, re-structuring etc) or the company no longer exists – subject to the selection being fair (4) Statutory illegality- where it is illegal for employer to continue to employ employee- employer must prove (5) Some Other Substantial Reason (SOSR) catch all category- company may make fair dismissals for economic objectives/restructuring of company etc **(Any 3 for 5 marks)**
- C. Conclusion: Ruth’s dismissal may be considered unfair as this was an isolated incident of misconduct which was not reflective of her normal performance as an employee, her employer had provided her with the alcohol, and no proper procedures were used to effect her dismissal (no prior notification of the disciplinary meeting, no representative etc) – this act may not be classified as gross misconduct and therefore the most appropriate remedy may have been a warning **(2 marks)**

Solution to Question 10

- Standard of Care: issue of whether or not the standard of required care is breached is ascertained based upon the reasonable man test – in effect would a hypothetical person of reasonable prudence, common sense & common knowledge have committed the act complained of **(1.5 marks)**
- In determining whether a reasonable man would act in a certain manner the Court review the following factors: (1) the foreseeable likelihood of damages – the more likely the action is to cause harm the higher the standard of care- *Glasgow Corporation v Taylor (1922)* – warning notice not sufficient *Bolton v Stone (1951)* the minuscule probability of an accident relieved both defendants of liability **(2 marks)** (2) the seriousness of the likely damage- the more serious the damage, the higher the standard imposed – in *Paris v Stepney Borough Council (1951)* because the gravity of the injury was high the failure of the defendant to take reasonable measures to reduce a risk breached the standard of care **(2 marks)** (3) the social utility of the defendant’s actions – the motivation behind the defendants conduct may be a factor in determining negligence, *Watt v Hertfordshire County Council (1954)* **(1.5 marks)** and (4) the cost of eliminating the risk – where the risk is low and the cost is high, failing to eliminate a risk completely may not amount to negligence – however where the risk or gravity is high – cost is not a factor – *Latimer v AEC Ltd (1953)* the cost of closing the factory outweighed the risk of injury_ **(2 marks)** – none of the factors are conclusive of themselves and all relevant factors are taken into consideration by the Courts – although based on the facts it is likely

that the actions of the doctor are in breach of the required standard as failure to correct patient information on a medical chart is something that a reasonable person would not do and is likely to result in a high probability of an injury, with potential grave consequences **(1 mark)**

Solution to Question 11

- A. An agent is a person who creates a contract on behalf of another person **(1 mark)** – classes of agent: (1) general agent – a person empowered to make contracts incidental to normal business and trade (for example, employees) **(2 marks)**, (2) special agent – a person empowered to make contracts in relation to specific subject matter (such as travel agent/estate agent/mortgage and insurance brokers etc) **(2 marks)**
- B. Agency by operation of law/ necessity arises where a contract of agency is deemed to exist in the event of extraordinary circumstances – in effect, where an emergency situation arises relating to the transportation of goods or where one person has possession of another's goods they may become an agent of necessity **(1 mark)** – for this to occur the following factors must exist (1) an emergency must arise, Sachs v Miklos (1948) (2) the agent must attempt to contact the principal but is unable to communicate Springer v Great Western Railway (1921) (3) the agent must be acting in good faith and in the best interest of the principal and to protect the principal's interest – in these circumstances the Court will imply that the person is acting as an agent of necessity, Great Northern Railway v Swaffield, 1874 (4) agent must be acting reasonably: **(3 marks)** – conclusion that an agency of necessity exists between Alex and Maxwell (there was an emergency, Maxwell was uncontactable, Alex was acting to protect Maxwell's interest) and Alex can recover the £800 from Maxwell **(1 mark)**

Accounting Technicians Ireland

Examiner's Report Examination: August 2012 Law & Ethics (NI)

Statistical Analysis – By Question

Question No.	1	2	3	4	5	6	7	8	9	10	11
Average Mark (%)	62%	43%	81%	57%	44%	39%	42%	49%	64%	23%	55%
Nos. Attempting	62	57	51	46	55	37	38	53	58	51	46

Statistical Analysis - Overall

Pass Rate	65%
Average Mark	51%
Range of Marks	Nos. of Students
0-39	14
40-49	8
50-59	19
60-69	18
70 and over	5
Total No. Sitting Exam	64
Total Absent	18
Total Approved Absent	2
Total No. Applied for Exam	84

General comments:

The performance of students was quite good in this examination with over 60% of students gaining a pass and a number of these students gaining a merit grade. Many papers as in previous years displayed a very high standard of answers given and it was clear to see that some students have worked very hard.

Students performed well in questions, 3, 4, 9, and 11. In relation to the compulsory Ethics question a significant number of students gained high marks. As in previous years, huge gaps of knowledge were displayed by students who attempted to answer Question 10.

As in previous years it appears that the majority of students who did not pass the examination answered at least one question to a very high standard. This again proves

that these students have the ability to pass and can do provided they do a revision. This wide variation of marking is also evident by students who have passed the examination. Some of these scripts narrowly missed a merit grade. Therefore, students revise more to ensure that you can achieve the highest grade possible.

As general guidance:

1. Revise topics from the **manual**
2. Read questions carefully and answer **all** parts
3. Answer **only** what you have been asked.
4. **No one word answers** unless the answer so requires.
5. Do not provide case names without some facts of the case. Facts of the case without the case name will get marks. Case names with no facts will not get marks.

In terms of presentation, I emphasise again:

1. Write clearly in a dark coloured pen
2. When a question is divided into separate parts, for example sections (a) and (b), students should answer each section separately showing a clear division between each answer.
3. Start a fresh page for each new question

Question 1 (compulsory question):

A significant number of students gained high marks in this question and the vast majority of those who scored well in this question passed the examination. Revise chapters (chapters 16 and 17) inside out. Students who scored poorly in this question found it difficult to pick up enough marks in other questions to pass the exam.

(A) A significant number of students had carefully revised this topic and provided a thorough answer on insider trading. Some students lost marks because they did not provide enough information. Some students who failed to answer part (a) correctly provided irrelevant answers on other corporate offences such as money laundering. Many students did go on to answer parts (b) and (c) correctly and gained some marks. Therefore, students must revise both chapters to score well.

(B) This section was generally very well answered with students showing sound knowledge of this area of the Code of Ethics.

(C) This section was generally well answered. However, some students stated that Accounting Technicians Ireland had the power to send their members to prison.

Question 2:

This question was relatively well answered and students generally displayed some knowledge of the Law of Partnerships.

(A) Many students were able to provide at least two duties. However, students lost marks because they forgot to answer whether or not George had breached his duties. If students answered this in Part (B) then the relevant mark was awarded. Students who did not gain any marks referred to Directors duties in relation to a company and frequently mentioned 'company' in their answer.

(B) Those students who scored well provided answers with all the relevant details such as the responsibility of the retiring partner to advertise in the local newspaper. Other students had clearly not revised this area.

Question 3:

As usual this question was very well answered. The majority of students who did not pass this examination attempted this question and scored well. This is an easy question that has come up in various forms in the past papers and it was pleasing to see that students have fully grasped the difference between ordinary and preference shares. However, many students mistakenly stated that preference shareholders had the right to vote.

Question 4:

(A) Many students provided at least three examples but some students incorrectly stated that a shareholder of the company could not be the director of the company.

(B) (i) Many students scored some marks but lost marks by not providing sufficient detail and defining correctly the nature of a substantial property transaction.

(ii) This section was well answered and nearly all students correctly identified the fact that Staunton had breached his duties and the likely penalties to be imposed.

Question 5:

This question was not very well answered

(A) A significant number of students confused the annual return date with the time requirements in relation to submitting the annual accounts and therefore failed to gain any marks.

(B) Most students gained some marks in this section

- (C) Most students were able to provide some information in relation to the records that a company must keep however, the majority of students failed to give correct time periods.

Question 6:

This question was not very popular and produced mixed results overall, although it also appeared in the May session. Students are reminded that this is an essential aspect of the course. A basic sound knowledge of this area is essential if you are to practice competently as an Accounting Technician.

- (A) Many students did not correctly identify that a company must be solvent. Some students incorrectly stated the opposite and stated that the company must not be able to pay its debts.
- (B) Many students failed to give the correct procedure and provided irrelevant answers in relation to the rules governing the priority of debts. Some students did provide some details and the students who scored well were able to provide a detailed account of the procedure prior to the company meeting including relevant time limits.

Question 7:

This question was not very popular with students, but those who attempted the question scored some marks. Students in particular had not revised the newer areas of the course and failed to display any knowledge of the small claims court and the commercial court.

Question 8:

Overall, this question was reasonably well answered.

- (A) Most students provided at least three examples of how a contract can be discharged and correctly cited that in this case the method was frustration.
- (B) This section was not as well answered but those who mentioned damages and the key ingredient of foreseeability gained at least half marks. Those students who cited case law examples scored very well.

Question 9:

Generally, this question was well answered with many students scoring full or nearly marks.

- (A) Most students correctly stated at least 6 examples.
- (B) Some students only provided one example, such as redundancy. To gain full marks it was necessary to detail at least three methods and provide more than one word answers.
- (C) The majority of candidates correctly stated that Ruth's dismissal had been unfair and that it did not constitute gross misconduct.

Question 10

This question was poorly answered. Students did not identify that the question was asking in particular about the 'Standard of Care' and the Reasonable Man Test. However, some students scored full or nearly full marks for this question and had obviously carefully revised this topic.

Question 11:

This question was very well answered.

- (A) All students provided a satisfactory definition of an agent. However, some students failed to correctly identify the two main classifications and lost some marks.
- (B) This was generally well answered and many scored full marks providing detailed answers. The level of detail provided was impressive and the majority of students identified correctly the conditions that must exist and referred to case law.