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# **Law & Ethics** **Northern Ireland**

1<sup>st</sup> Year Examination

**May 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.

There are often many possible approaches to the solution of questions in professional examinations. The examiner will accept alternatives to the suggested solution shown herein as long as that alternative is appropriate.

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 2012

### Paper: LAW & ETHICS (NI)

Friday 18<sup>th</sup> May 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**

*Barnaby and Brooks Ltd* has operated a very successful private limited company for the past fifteen years in the gourmet food manufacturing sector. They have recently decided to convert their business into a public limited company and are in the process of applying for a listing on the London Stock Market. As part of this process their solicitors have informed them that they will need to comply with the Combined Code on Corporate Governance. At present Brooks is the Chief Executive Officer, as well as the Chairperson of *Barnaby and Brooks Ltd*. Both Barnaby and Brooks are the only directors of the company and both of them act in an executive capacity. In addition, both consented to the appointment of each other as executive directors and both unanimously decide their own salaries and have service contracts of five years each. Their solicitors have commented that certain internal rules and procedures will have to be altered in order to comply with the rules on corporate governance. As Barnaby and Brooks know nothing about corporate governance they seek your advice in this regard.

Also, after advising Barnaby and Brooks, you go to your local college where you are giving a lecture on the Accounting Technicians Ireland Code of Ethics to new students.

- A. List and explain any FIVE principles of the Combined Code on Corporate Governance. **10 Marks**
- B. Outline to Barnaby and Brooks any THREE changes that they will need to make to the internal rules and procedures of the company in order to ensure compliance with the rules on corporate governance. **3 Marks**
- C. State TWO other sources of Corporate Governance. **1 Mark**
- D. Discuss any THREE threats to compliance with the principles stated in the Accounting Technicians Ireland Code of Ethics. **6 Marks**

**Total 20 Marks**

**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**

Chris and Adam are recently graduated software design engineers, who have designed a software program that allows users to be able to track the location of any of the persons listed in their mobile phone address book. They have decided to register a company to exploit this invention and have entered into negotiations with numerous technology companies to licence the use of this program. They have decided to name the company "*Afflemack International Association*".

- A. Advise Chris and Adam on the limitations imposed upon the choice of company name under the Companies Act 2006 and determine whether the name *Afflemack International Association* is capable of registration.

**7 Marks**

- B. Although Chris and Adam have decided to establish a private limited company they are unsure as to whether this company should be limited by shares or limited by guarantee. Explain the distinction between a company limited by shares or a company limited by guarantee and advise Chris and Adam which of these is the most suitable choice of business form.

**3 Marks**

**Total 10 Marks**

**QUESTION 3**

In the context of company capital define the following terms:

- A. (i) Issued Share Capital  
(ii) Called-up Capital.  
(iii) Paid up Capital

**3.5 Marks**

- B. What is meant by the *Nominal Value* of a share and can a share be issued at a price below its nominal value?

**2 Marks**

- C. The meaning of the term "share premium" and any THREE purposes for which the Share Premium Account can be utilised.

**4.5 Marks**

**Total 10 Marks**

**QUESTION 4**

Eden is the managing director of *Prestige Investments Ltd*. The main business of the company is to offer investment advice and to manage investment funds on behalf of clients. Eden's husband Leahy is the Chief Executive Officer and majority shareholder in *Turnwell Telecommunications Plc*. This company has been in financial difficulty for the past two years and is on the verge of insolvency. Last year Leahy and Eden discussed this situation and Eden agreed to help her husband by recommending to investment clients of *Prestige Investments Ltd* that they should invest in *Turnwell Telecommunications Plc*.

As a consequence of this advice a total of £450,000 was invested in *Turnwell Telecommunications Plc* by clients of *Prestige Investments Ltd*. Despite this injection of funding *Turnwell Telecommunications Plc* was unable to turn around its business losses and in March 2012 the company was placed in compulsory liquidation on the grounds of insolvency. Following the failure of this business one of the investment clients of *Prestige Investments Ltd* discovered that Leahy and Eden are married, and he has brought a civil claim against *Prestige Investments Ltd* to recover his lost investment based a breach of ethics and duties by the company to its clients.

Following the initiation of this claim *Prestige Investments Ltd* removed Eden as managing director of the company and is considering suing her for breach of her duties. In this regard they seek your advice as follows:

- A. Explain (in brief) the role of a managing director. **2 Marks**
- B. Discuss any TWO duties that a director owes to a company. **6 Marks**
- C. Assess whether Eden has breached her duties to *Prestige Investments Ltd*. **2 Marks**
- Total 10 Marks**

**QUESTION 5**

*Hambridge Toy Manufacturers Ltd* has recently become incorporated and Franklin has agreed to act as the company secretary. Franklin has been advised by their company solicitor that one of his duties as the company's secretary may be to ensure that *Hambridge Toy Manufacturers Ltd* hold's Annual General Meetings (AGMs). Franklin has never heard of an AGM and in the event that the company decide to hold an AGM, Franklin seeks your advice.

Advise Franklin in relation to the following matters:

- A. The time limits imposed upon companies in relation to the calling of an AGM. **1.5 Marks**
- B. The notice required to call an AGM, the details that must be included in this notice, and the documents that must be attached to the agenda for the AGM. **4 Marks**
- C. What is the primary purpose of the AGM. **3 Marks**
- D. The penalties that can be imposed upon a public company which fails to call an AGM. **1.5 Marks**
- Total 10 Marks**

**QUESTION 6**

As a consequence of declining sales, *Hampton Homes Ltd* is considering placing the company into liquidation. As the company is insolvent the directors are considering placing the company into compulsory liquidation and seek your advice as follows:

- A. Define the term "liquidation".  
**1.5 Marks**
- B. List any TWO grounds (excluding insolvency) under the Companies Acts 2006 that facilitate an application for the compulsory liquidation of the company.  
**2 Marks**
- C. Outline any THREE grounds upon which the High Court can order the compulsory liquidation of the company on the basis that it is "just and equitable" to do so.  
**3 Marks**
- D. List the THREE persons who have the right to apply for the compulsory liquidation of the company.  
**1.5 Marks**
- E. Determine whether the directors of *Hampton Homes Ltd* are correct in their belief that as the company is insolvent the only liquidation option available to the company is a compulsory liquidation.  
**2 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**

The European Union has recently decided to enact a law requiring each member state to impose age limits for entry to and exit from primary level and secondary level education. Under EU law this provision may be enacted as either a European Regulation or a European Directive.

Discuss the nature of and the distinction between European Regulations and European Directives and determine whether a Regulation or a Directive is the most appropriate legislative form in this situation.

**Total 10 Marks****QUESTION 8**

Chester recently wrote to *Manfield College* requesting information regarding one of their accounting courses. In the letter he requested information on when the course was commencing, the cost of tuition, and whether he was eligible to study on this course. He enclosed a copy of his 'A' Level results with this letter. Two weeks later Chester received a letter from *Manfield College* stating that, based on his 'A' Level results, they were happy to offer him a place on the course commencing in two weeks time. They stated that the fees for the course were £3,000 per annum payable in advance of commencement onto the course. Chester wrote back to *Manfield College* that same day and stated that he was accepting a place on the course, but that he could only afford to pay them £2,000 now, but that he would pay them the remaining £1,000 within four weeks of the commencement of the course.

A day after sending this letter Chester received another letter from UCAS stating that following a request for a recheck on his 'A' Level result for Accounting, his mark was being increased from a B to an A and that he now had enough points to do a BA in Accounting and Finance at *Preston University* (a national non fee paying University). Chester immediately completed the form at the end of the UCAS letter and accepted his place at the university. That same day he wrote to *Manfield College* stating that he wanted to revoke his acceptance of a place on their accounting course and requested the return of his £2,000. On receipt of this letter the admissions officer of *Manfield College* contacted Chester and informed him that as he had created a contract with the College they would not be returning his £2,000 and that they intended to sue him for the balance of the £1,000 due.

Chester seeks your advice in this regard.

Explain whether a valid and enforceable contract exists between Chester and *Manfield College* by discussing the law in relation to offer, termination of an offer and acceptance and determine whether Chester is entitled to the return of his £2,000 or whether he is obliged to pay them the balance of £1,000.

**Total 10 Marks****P.T.O.→**



**QUESTION 9**

Jacob has been employed by *Copperpot Catering Ltd* for the past six years, as their Director of Sales and Marketing. Recently Jacob was called to a meeting with the management of *Copperpot Catering Ltd* and informed that they were not satisfied with his performance and the sales record of the company in the past year. They advised him that they were transferring him from their head office in Derry City to their regional sales office in Armagh City with immediate effect. They further stated that the position he would be taking in the Armagh office was that of regional sales manager, and that his salary would be reduced from £80,000 per annum to £55,000. They also stated that they planned on monitoring his performance for six months and that if it did not improve that they would have no option but to dismiss him. When Jacob protested to these changes he was told that he had no option – he either accepted them or quit his position.

Jacob is considering resigning from his position and suing *Copperpot Catering Ltd* for constructive dismissal.

- A. Define the term “constructive dismissal” and explain the burden of proof when such a claim is raised.  
**2.5 Marks**
- B. Explain any THREE actions that may amount to a fundamental breach of contract and facilitate a claim for constructive dismissal.  
**4.5 Marks**
- C. Assess the potential success or otherwise of Jacob’s proposed claim of constructive dismissal.  
**1.5 Marks**
- D. If Jacob decided not to resign but to accept the position as regional sales manager in the company’s Armagh offices and if his performance does not improve in the next six months can *Copperpot Catering Ltd* lawfully dismiss Jacob on the grounds of a lack of capability?  
**1.5 Marks**

**Total 10 Marks**

**QUESTION 10**

Austin recently audited the accounts of *Westwall Construction Ltd* and provided an unqualified auditor's report to the shareholders of the company at its Annual General Meeting (AGM). Subsequent to this report the company has been investigated by the Serious Fraud Office (SFO) for fraudulent activity. The SFO has discovered that the financial accounts of the company have been falsified in terms of sales records, purchases records, stock and the value of its fixed assets (which have not been depreciated in line with current market value). As Austin had not attended *Westwall Construction Ltd's* stock take in the previous five years he was unaware of the falsified purchases, sales and stock records.

The shareholders of *Westwall Construction Ltd* have recently appointed new directors to the company. These directors have contacted Austin to inform him that they plan on suing him for all losses arising in the company as a consequence of his negligence.

- A. Draw a table outlining the FOUR elements of negligence and list the tests applied by the Court to determine the existence of each of these elements.

**8 Marks**

- B. Assess the potential success or otherwise of *Westwall Construction Ltd's* claim against Austin for negligence.

**2 Marks**

**Total 10 Marks**

**P.T.O.→**

**QUESTION 11**

Jessica, a caterer, recently purchased ten 1kg bags of flour from *Crompton Flour Mills*. She planned to use this flour to make a cake and desserts for a wedding that she was catering. When she weighed out the flour she discovered that there was only 0.90kg's in every 1kg bag of flour. She contacted *Crompton Flour Mills* but they have ignored her telephone calls, letters and emails. Jessica has now decided to address her complaint against *Crompton Flour Mills* to the Northern Ireland Department of Trade, Enterprise and Investment as she thinks that this is a misleading practice under the Consumer Protection from Unfair Trading Regulations 2008 and that the Department have a duty to enforce these Regulations

- A. Define a "misleading practice" under the Consumer Protection from Unfair Trading Regulations 2008.  
**1.5 Marks**
- B. Outline any FIVE misleading practices prohibited by the Consumer Protection from Unfair Trading Regulations 2008 and determine whether the actions of *Crompton Flour Mills* would be classified as a misleading practice.  
**5.5 Marks**
- C. List THREE sanctions that can be imposed for breach of the Consumer Protection from Unfair Trading Regulations 2008.  
**3 Marks**

**Total 10 Marks**

# 1st Year Examination: May 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. Combined Code on Corporate Governance: the Code requires that companies must have the following: (1) Effective Board: collectively responsible for the success of the company – acting *bona fide*, (2) Balanced and Independent Board: a strong, involved board of directors (no individual/small group can dominate board decision making) with a balance of executive and non-executive directors, including (two) independent non-executive directors, (3) Chairperson and Chief Executive: a clear division of responsibilities between the chairman (responsible for the working of the board/meetings) and chief executive (full operational control to carry out board policies), (4) Information for the professional development of the Board: the provision of timely, quality information from the board – the Chairperson must ensure the accuracy of this information, (5) Appointments to the Board: formal, transparent procedures for the appointment of new directors (maximum period of employment contract of 1 year), (6) A Process for the Re-Election of Directors: regular re-election of all company directors, (7) Transparency of Remuneration: independent determination of remuneration – a committee (usually NED's) to decide the remuneration of the executive directors (8) Financial Reporting: balanced and understandable financial reporting; (9) Auditing: transparent arrangements for considering how the Board should apply the financial reporting and internal control principles and how to maintain an appropriate relationship with the company's auditors; and (10) Internal Controls: maintenance of a sound system of internal control **(any 5 x 2 marks = 10 marks)**
- B. Internal Changes: (1) separate the role of the Chairperson and CEO – Brooks should not have both roles, (2) appointment of non-executive directors to the Board, (3) formal procedures for the appointment of directors to the Board, (4) reduction of directors service contracts from 5 years to 1 year, and (5) adopt procedures to ensure transparency of the directors remuneration **(any 3 x 1 mark = 3 marks)**
- C. Sources of Corporate Governance: (1) UK company legislation (2) UK criminal legislation (3) Company's Constitutional Documents (4) Listing Rules as published by the LSE **(any 2 x 0.5 marks = 1 mark)**
- D. Threats to compliance: (1) Self interest: usually involve financial gain e.g. improper use of corporate assets or over reliance on one client's fees/entering business partnership with client (2) Self review: inadequate operation of self review e.g. reliance on previous results that have not been double checked (3) Advocacy: promote your organisation with misleading or false statements (4) Familiarity: you fail to carry out your work objectively for a client as you have formed to close a personal relationship with them (5) Intimidation: you are forced to act in a certain way/falsify

**Solution 1 (Cont'd)**

- results or reports due to the pressure/threatened by client or third party **(any 3 x 2 marks)**

**Solution to Question 2**

- A. Company Names: All company names must be registered under the Companies Act 2006– the Secretary of State prohibits names that constitute a criminal offence e.g. ETA **(0.5 mark)** – other names require approval: (1) names suggesting a connection with any government department, local authority or public body, where no such connection exists (2) a name that uses a regional, national or international pre-eminence e.g. European, International (3) a name that uses a business pre-eminence e.g. Board/Association (4) Official names of businesses or professions e.g. Trade Union/University (5) name that includes a registered trademark, without production of the consent of its owner, (6) a name that is regarded as being misleading or confusingly similar to a registered name, or (7) a name of an existing company **(any 5 = 5 marks)** – “Affelmack International Association” – likely to be refused registration on the grounds that (1) uses pre-eminence ‘international’, (2) it is confusing similar to a trademarked name “Apple Mac”, (3) it is misleading as it is not an association and (4) the word “limited” is omitted from the name **(any 2 = 1.5 marks)**
- B. Companies Limited by Shares: this applies to both public and private companies irrespective of the company’s objectives – in this instance the liability of shareholders is limited in relation to the value of fully-paid shares – they are liable to pay up the un-paid portion of partly paid shares in the event of liquidation **(1 mark)** – whereas Companies limited by guarantee are eligible to act as private limited companies only and are usually non-profit-making organisations whereby the members do not provide money on formation/incorporation but contribute a pre-determined amount to the assets in the event of liquidation **(1 mark)** Advise Chris and Adam to set up a company limited by shares as this is most appropriate for them to start a business venture with a view to making a profit. **(1 mark)**

**Solution to Question 3**

- A. Capital (i) Issued Share Capital refers to the amount of capital that the company has issued to date. The Issued Share Capital is stated in the registration documents on incorporation, and thereafter in the company’s annual return – details of the issued capital (and to whom it is issued) is also contained in the Register of Members **(1.5 marks)** (ii) Called-up Capital is the amount of money outstanding on shares that the shareholders have agreed to pay at a later date **(1 mark)** (iii) Paid up Capital is the amount of money that shareholders have paid on the shares issued **(1 mark)**
- B. Shares: the nominal value of a share is the base value of the share set upon the incorporation of the company. Shares cannot be issued below the nominal value but they can be issued at a value above the nominal value **(2 marks)**
- C. Share Premium Account: a share premium is where a company issues shares above their par nominal value – the excess in value is the premium and must be lodged into the share premium account **(1 mark)** – under the CA 2006 the account can only be utilised as follows: (1) paying up un-issued shares for use in a bonus issue (a gift of shares to existing shareholders that converts the premium into share capital) – (2) to write off the expenses of issuing shares– (3) to write off the commission relating to any issue of shares or debentures by the company **(3 x 1.5 marks = 4.5 marks)**

### Solution to Question 4

- A. Managing Director – their role is to: (1) oversee the day-to-day management of the company, (2) to exercise a second or casting vote in the event of the vote being tied at a Board Meeting, (3) to bind a company to all contracts, and (4) to ensure that the objectives and policies formulated by the Board Directors are implemented **(any 2 = 2 marks)**
- B. Director's Duties: **(any 2 x 3 marks = 6 marks)**
  - (1) Duty to act within powers: The directors must exercise their powers for the purposes for which they were conferred: these powers may only be exercised in furtherance of the company's objectives (intra-vires), and for a proper purpose (cannot be an illegal contract) – directors cannot exceed their authority/power as established in the Articles of the company – this occurred in *The Royal British Bank v Turquand (1893)* and the directors were sanctioned accordingly
  - (2) Duty to promote success: act in good faith and in the best interests of the company and consider a number of factors: consequences of decision/interests of employees/need to develop good relationship with other parties/impact of decision on environment/maintain high standards/act fairly
  - (3) Duty to exercise independent judgment: do not delegate duties without authorisation/allow decisions to be influenced
  - (4) Duty to exercise reasonable care and skill: exercise duties to a standard of a reasonable diligent person carrying out those functions and to the standard of the general skill and knowledge and experience of director *Dorchester Finance Co Ltd v Stebbing (1977)*
  - (5) Duty to avoid conflicts of interest: director cannot have interest in competing company or to take opportunities away from company to self benefit *Boston Deep Sea Fishing Co v Ansell (1888)*
  - (6) Duty not to accept benefits from third parties not accept a financial or non-financial benefit from a third party unless he has received approval from shareholders
  - (7) Duty to declare interest in proposed transaction must disclose any interest he may have in a transaction as failure to disclose results in an offence
- C. Conclusion: Eden breached her duties as (1) she was not acting in the best interest of *Prestige Investments Ltd*, (2) she failed to disclose her conflict of interest, and (3) she exercised her powers for an improper purpose when she recommended to investment clients of *Prestige Investments Ltd* that they should invest in *Turnwell Telecommunications Plc* **(any 2 = 2 marks)**

### Solution to Question 5

- A. Time Limits: Public Company: An AGM should be held annually six months before financial year end with a maximum period of 15 months permissible between these meetings Private Company: no obligation to hold an AGM **(1.5 marks)**
- B. Notice: Public: all shareholders must receive 21 days clear notice of the AGM – Private- 14 days **(1 mark)**, specifying the time, date and place of the meeting and including an agenda for that meeting **(1.5 marks)** – the following documents must be attached to the agenda: (1) the accounts (profit and loss, plus the balance sheet), (2) the Director's Report, and (3) the Auditor's Report **(1.5 marks)**
- C. Primary Purpose of the AGM: (1) consideration of the accounts, (2) consideration of the Director's and Auditor's reports, (3) declaration of a dividend, (4) retirement by rotation and re-election of Directors, and (5) re-appointment/appointment of the Auditor **(3 marks)**
- D. Penalties for non-compliance: in accordance with CA 2006 s.336 a company that fails to hold an AGM is guilty of an offence and liable to the imposition of a fine **(1.5 marks)**

### Solution to Question 6

- A. Liquidation: this term means the dissolution of the company – where the liquidator is authorised to sell the assets of the company, pay the debts of the company, compromise any outstanding claims and strike the company off the register **(1.5 marks)**
- B. Statutory Grounds for Compulsory Liquidation: (1) the company has passed a special resolution to liquidate, (2) is a public company with share capital and not issued with a trading certificate and 12 months have passed since incorporation (3) the company has failed to commence trading within 12 months of formation or has failed to trade in the last 12 months, (4) the number of members falls below statutory minimum (5) the company is unable to pay its debts, (5) Court considers it just and equitable **(any 2 = 2 marks)**
- C. Just and Equitable Grounds for Compulsory Liquidation: (1) failure in substratum, (2) deadlock in corporate management, (3) illegal or fraudulent objectives, (4) where the company is a corporate instrument of fraud, or (5) to protect interests of minority shareholders **(any 3 = 3 marks)**
- D. Persons who can apply for Compulsory Liquidation: (1) the company itself, (2) a creditor who has a readily ascertainable debt, (3) the Director of the Company **(3 x 0.5 marks = 1.5 marks)**
- E. *Hampton Homes Ltd* is not correct in their behalf that as the company is insolvent the only liquidation option available to the company is a compulsory liquidation – although they could not opt for a members voluntary liquidation (where the prerequisite is solvency), they could opt for a creditor's voluntary liquidation, which is generally a much quicker and cheaper way to liquidate the company **(2 marks)**

### Solution to Question 7

- Regulation – this is a piece of EU legislation that is binding in its entirety, and directly applicable on all the member states – a Regulation sets down a date for its implementation in the member states – and the member states need take no further legislative action – Regulations are published in the Official Journal of the EU, and they enter into force on the date specified therein – it is not feasible for all EU laws to be enacted by means of a Regulation – as the social, economic, cultural, legal infrastructure etc of the member states are different, therefore in some instances enactment of a Directive is more appropriate **(4.5 marks)**
- Directive – this is a guideline/instruction to member states as to how they should standardise legislation in a particular area (given a particular timeframe in which to achieve this standardisation) – a Directive is binding as to the result to be achieved – but is not directly applicable – the Directive gives the individual member states the choice as to the form and method of implementation – in the UK Directives become part of law through either an act of Parliament/NI Assembly (where it involves a substantive issue) or a statutory instrument (where it involves more of a technical issue) – the idea embodied in the Directive is enacted as legislation – but the exact particulars are at the discretion of the member states – examples include the Data Protection Act 1998/The Employment Equality Age Regulations (NI) 2006 **(4.5 marks)**
- A Regulation would be appropriate if education policy is similar in each of the member states, and if there are no budgetary restraints, otherwise a Directive is the better option – as the law can be adjusted to match that of the member state **(1 mark)**

### Solution to Question 8

- Contract Formation: to create a contract an offer must be met by acceptance and supported by consideration **(1 mark)** – one of the key issues in the question is whether the offer made by *Manfield College* was accepted by Chester – an offer can be defined as “a clear and unambiguous statement of the terms and conditions under which the parties are willing to contract” whereas acceptance can be defined as the “final and unequivocal expression of agreement to the terms of the offer” **(2 marks)** – to be acceptance the response must be a mirror image of the offer – where acceptance is not a mirror image of the offer – but rather a variation, abrogation or provisional acceptance – it is classified as a counter-offer – this is where the response includes new conditions – the general rule is that a counter-offer amounts to the termination of the offer by the creation of a new offer – this new offer can be turned to be accepted or rejected – relevant case law includes: *Swan v Miller (1919)* and *Hyde v Wrench (1840)* – Regarding Chester: *Manfield College* made him an offer but the response by Chester was not an unequivocal acceptance of *Manfield College’s* offer (as it varied the requirement regarding payment from £3,000 per annum payable in advance of commencement onto the course to £2,000 now, and the remaining £1,000 within four weeks of the commencement of the course), but a counter-offer – this counter-offer would require communication of acceptance by *Manfield College* – which they did not communicate acceptance to **(4.5 marks)** – Chester’s revocation of the offer is valid as the rule is that revocation can take place at any time prior to acceptance of the offer (as *Manfield College* did not communicate acceptance to Chester’s counter-offer he was free to revoke this offer) **(1.5 marks)** – therefore Chester is entitled to the return of his £2,000 as there is no contract between him and *Manfield College* **(1 mark)**

### Solution to Question 9

- A. Constructive Dismissal: this is where the employee terminates the contract under which they are employed because of the conduct of the employer – the conduct of the employer must be sufficiently serious as to entitle the employee to resign from their employment – in this instance the onus lies on the employee to prove that what has happened amounted to a dismissal **(2.5 marks)**
- B. Fundamental Breach of Contract: (1) Changes to employee’s pay – such as a reduction in pay even by a small amount – *Industrial Rubber Products v Gillon (1977)* (2) Change in hours of work – or to the shift pattern/location *(Simmonds v Dauty Seals Ltd (1977))* (3) Change in status/duties *(Marriot v Oxford and District Cooperative Society 1970)* (4) Failure to make the workplace employee friendly – *Eastern & Coastal Kent PCT v Grey (2009)* (5) failure by an employer to make workplace safe– *Nottinghamshire County Council v Meikle (2004)* (6) Employers conduct unreasonable towards employee **(any 3 x 1.5 marks = 4.5 marks)**
- C. Conclusion: that Jacob’s claim is likely to be successful as there was a unilateral alteration to his contract by (1) altering his salary, (2) requiring him to relocate, and (3) demoting him through changing his job title/description – and although Jacob has attempted to discuss this with his employer his employer has acted unreasonably in the circumstances by telling him that he either accepted the changes or quit his position **(1.5 marks)**
- D. Lack of Capability: if Jacob decided not to resign but to accept the position as regional sales manager in the company’s Galway offices, if his performance did not improve in the next six months *Copperpot Catering Ltd* may effect a lawful dismissal of Jacob on the grounds of a lack of capability – however, these facts would indicate that the company should give Jacob warnings, give him an opportunity to improve, and consider alternative positions **(1.5 marks)**



**Solution to Question 10**

<b>A. Elements of Negligence</b>	<b>Tests</b>
Duty of Care:	(1) Neighbour Test (2) Modern Day Test: A. Was it reasonably foreseeable that the defendant's action would cause harm? B. Is there sufficient proximity between the plaintiff and defendant? C. Is it fair, just and reasonable to impose a duty of care on the defendant? <b>(3 marks)</b>
Standard of Care:	Reasonable Man Test – taking into consideration: A. The probability of causing damage B. The seriousness/gravity of the likely damage C. Issues of cost and practicalities in taking precautions D. The social value of the defendant's actions <b>(2.5 marks)</b>
Causation:	A. Single Cause: the "but for" test B. Multiple Causes: whether or not the actions of the defendant <u>materially or substantially</u> contributed to the plaintiff's injury <b>(1.5 marks)</b>
Remoteness:	Reasonable Foreseeability <b>(1 mark)</b>

- B. Conclusion that: (1) Austin owed *Westwall Construction Ltd's* a duty of care (based on foreseeability and proximity), (2) he breached the standard of care by not attending *Westwall Construction Ltd's* stock take in the previous five years, (3) *but for* the actions of Austin the shareholders of *Westwall Construction Ltd* may not have suffered a loss, and Austin's actions materially and substantially contributed to this loss, and (4) these losses are reasonably foreseeable – thereby Austin is liable in negligence to *Westwall Construction Ltd* **(2 marks)**

**Solution to Question 11**

- A. Definition of a Misleading Practice: Either an action or an omission : A misleading action: these are practices that mislead the consumer through the provision of false information or the deceptive presentation of a product, and the action causes the consumer to make a different economic decision: An omission is the failure to provide relevant information which the consumer needs to make an informed decision **(1.5 marks)**
- B. Misleading Commercial Practices: misleading information regarding: (1) failure to display prices (2) failure to state where product is from (3) failure to correctly state method of manufacture (4) failure to correctly state quality of product (5) failure to correctly state quantity of product (6) failure to correctly state specification of product (7) misleading information in relation to fitness of purpose of product (8) failure to correctly state any risks of use (8) failure to correctly state ingredients (9) failure to state terms and conditions **(any 5 x 5 marks)** – conclusion that the actions of *Crompton Flour Mills* may be classified as a misleading commercial practice as they have packaged the flour as 1kg when in fact it is only 0.9kg's **(0.5 marks)**
- C. Sanctions: (1) where a criminal offence is committed the party in breach is liable to a fine not exceeding £5000 and/or a term of imprisonment for a period up to two years, (2) Department can bring a civil action for claim of damages (3) Refer breaches to relevant Regulatory body e.g. Department to the Advertising Standards Authority **(3 = 3marks)**

**1<sup>st</sup> Year Examination: May 2012****Law & Ethics (NI)****Examiner's Report****Statistical Analysis – By Question**

Question No.	1	2	3	4	5	6	7	8	9	10	11
<b>Average Mark (%)</b>	52%	59%	69%	61%	63%	43%	42%	34%	59%	45%	22%
<b>Nos. Attempting</b>	193	124	166	192	151	158	127	167	183	121	157

**Statistical Analysis - Overall**

<b>Pass Rate</b>	55%
<b>Average Mark</b>	48%
<b>Range of Marks</b>	<b>Nos. of Students</b>
0-39	67
40-49	24
50-59	45
60-69	41
70 and over	27
<b>Total No. Sitting Exam</b>	204
<b>Total Absent</b>	51
<b>Total Approved Absent</b>	14
<b>Total No. Applied for Exam</b>	269

**General comments:**

The performance of students was reasonable in this examination with just over 55% of students gaining a pass and a significant number of these students gaining a merit grade. Many papers displayed a very high standard of answers given and I could clearly see that some students have worked very hard.

Students performed well in questions, 2, 3, 4, 5 and 9. In relation to the compulsory Ethics question a significant number of students gained full marks. As in previous years, huge gaps of knowledge were displayed by students who attempted to answer question 10.

Many students who received 40% or less in the examination (this representing a very high 34% of the total number of students sitting the exam) answered at least one question to a very high standard. This proved that these students have the ability to do well, provided they have done sufficient revision. Therefore, I encourage these students to take the time to revise this course, as they clearly have the ability to pass, provided they put in the required revision.

For students who are re-sitting this exam I would advise:

1. Revise topics from the manual and not from past paper solutions.
2. Read questions carefully and answer all parts (if you do not know the answer to one part have a guess- do not leave blank spaces as marks cannot be awarded).
3. Answer only what you have been asked. A factually correct lengthy paragraph will not gain you any marks if it does not answer the question being asked.
4. Avoid giving one word answers unless the answer so requires. It is important that the examiner knows that the student understands what they are writing.
5. Avoid giving case names without any reference to the facts of the case. Also, if you cannot remember the case name tell the examiner the facts of the case.
6. Students should always look at the marks awarded for each question as a guideline as to how much or how little detail is required.

In terms of presentation, I was pleased with the papers this year, however, there were some papers that I found difficult. Therefore, I would remind students to:

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.

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

A significant number of students were awarded full marks in this question and displayed considerable knowledge. I urge students to revise the Ethics chapters (chapters 16 and 17) in the manuals inside out as you are guaranteed a question worth 20 marks on these chapters in the exam. The majority of students who gained full or nearly full marks in this question received a pass grade.

- (A) This section was generally well answered with many students gaining full marks by referring to five principles of Corporate Governance. However, students who did not answer this part well appeared to misunderstand the question asked and listed principles from the Code of Ethics. Also, some students referred to the difference between private and public companies and to the various rules applicable to public companies. Many students who failed to answer part (a) correctly did go on to answer part (b) correctly and were awarded full marks for this question. Therefore, some students appeared confused by the term 'Combined Code of Corporate Governance' but did in fact have the knowledge to have answered it correctly.
- (B) This section was generally very well answered with students referring to at least 3 internal changes that had to be made.
- (C) This section was generally well answered. However, those students who failed to answer this section correctly provided a wide variety of incorrect answers. For example, students referred to European legislation or listed examples of corporate offences.
- (D) This section was quite well answered and many students gained full marks. Some students misunderstood the question and answered by referring to the principles contained in the Code of Ethics. Two students from different exam centres embarked on a lengthy discussion of fraudulent and wrongful trading. I urge students to read questions carefully and not to provide irrelevant discussions as

**Question 2:**

This question was quite well answered.

- (A) Many students were able to provide detailed answers. I was surprised that many students who referred to the law in detail and produced very good answers did not refer to the fact that 'Afflemack' was very similar to the well known registered trademark 'Apple Mac'. However, I was pleased with the standard of answers for this part.
- (B) Students were able to explain the distinction between companies limited by guarantee and companies limited by shares, however many students did not advise as to which was the most suitable choice. Students must always remember to double check their answers to ensure that they have answered everything asked.

**Question 3:**

This question was generally very well answered.

- (A) The majority of students correctly provided correct and detailed definitions
- (B) Most students scored full marks in this question.
- (C) The majority of students correctly defined the term 'share premium' but failed to correctly identify the correct purposes for which the share premium account can be utilized. As has happened in previous years, students confusingly referred to the uses of a company's general reserve account.

**Question 4:**

This answer was quite well answered.

- (A) Many students failed to provide a satisfactory definition. Students who scored full marks were able to identify at least two key features of the role of managing director.
- (B) Students lost marks by not providing sufficient detail. Students were required to not only identify two duties owed but also to explain what the duty entailed. Students who referred to relevant case law score full marks.
- (C) This section was well answered. Many students who did not score well in the above parts correctly identified that Eden had breached her duties. Full marks were awarded to students who identified correctly what duties had been breached.

**Question 5:**

This question produced mixed results overall.

- (A) Many students could not correctly identify the time periods. Students who scored well stated that AGM's were to be held 6 months before the financial end of year

- (B) Many students failed to give the correct notice periods of either 14 days for a private company or 21 days for a public company and provided a variety of answers ranging from 2 hours to 28 days. The majority of students failed to gain full marks in this part as they were unable to identify in sufficient details the details required and the documents to be attached.
- (C) This was generally well answered, but students lost marks by not providing sufficient detail. This question was worth 3 marks and students should identify at least two points of information.
- (D) Generally students were able to identify that a fine may be imposed on companies who fail to hold an AGM and who are under an obligation to do so.

### Question 6:

This question produced some very disappointing results. However, some students did score well and displayed a competent knowledge of the liquidation process.

- (A) Few students scored full marks in this question and the majority of students defined liquidation of a company as when the company's debts outweighed their assets and that they were insolvent.
- (B) Many students failed to correctly identify two grounds. Some students discussed the winding up process. However, those students who had prepared well were able to give at least two correct grounds scoring full marks.
- (C) Many students appeared to confuse parts (b) and (c). Students who provided correct grounds for part (b) but provided the answer in part (c) were given the appropriate marks for part (b).
- (D) This part was reasonably well answered with many students correctly identifying at least two persons who could apply.
- (E) This part was very poorly answered with the majority of students incorrectly identifying administration as an alternative option. Students did not appear to consider a creditor's voluntary liquidation as a viable option.

This is an essential part of the course and students need to understand the liquidation process. This year students did not appear to clearly understand the differences between the voluntary and compulsory liquidation processes.

### Question 7:

This question was not very popular with students, but those who attempted the question scored well. The majority of students were able to identify at least three key features belonging to a Directive and three key features of a Regulation. I was very impressed by students who provided reasons when choosing to implement the law by either Regulation or Directive. Some students did confuse Directives with Regulations, but if correct information was provided, they did not lose many marks.

**Question 8:**

Overall, this question was not well answered. Students who did well displayed sufficient knowledge of contract law, however, many students incorrectly stated that a contract had been formed. Many students provided detailed answers but failed to provide sufficient detail on the relevant areas of contract law. Students who scored well correctly defined an offer, provided examples of relevant case law and referred to the fact that a counter offer had been made, but that no communication of acceptance had been received. Some students incorrectly referred to the frustration of contracts.

**Question 9:**

Generally, this question produced mixed results but many students who attempted this question scored full marks.

- (A) Many students incorrectly defined constructive dismissal referring to unfair dismissal. Students who correctly defined constructive dismissal failed to correctly where the burden of proof lay.
- (B) Some students correctly answered this question. However, a number of students referred to reasons that are considered automatically unfair under the legislation. It appears that insufficient revision has resulted in students confusing between the different types of dismissal.
- (C) The majority of candidates correctly stated that Jacob's claim had potential of success.
- (D) This part was very well answered even by students who had failed to answer any of the above parts correctly.

**Question 10**

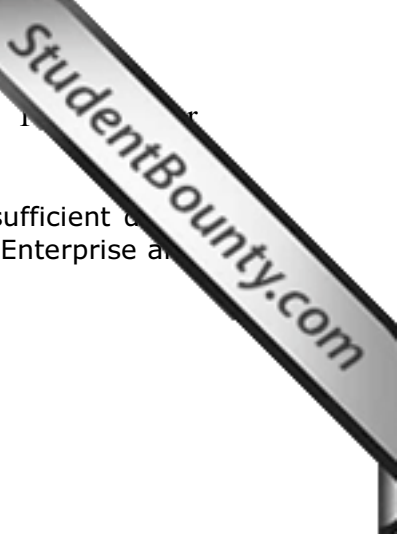
This question was either very well answered or very poorly answered.

- (A) Students who scored well drew the table (as contained in the manual) in detail and referred to the tests used. Very strong candidates referred to all the tests in detail and provided examples of relevant case law. The majority of weaker candidates who attempted this question gained at least one or two marks.
- (B) Many candidates correctly stated that the claim against Austin would be successful. Stronger candidates provided reasons for their answers and I was impressed by their application of the facts of the question to the relevant negligent tests.

**Question 11:**

This question was very poorly answered by the majority of students. Students clearly had not revised the topic of misleading practices.

- (A) The majority of students failed to correctly define a misleading practice.
- (B) The majority of students referred to prohibited practices or the Sale of Goods Act



(C) This part was very poorly answered. Students failed to provide sufficient detail and few students referred to the role of the Department of Trade, Enterprise and Investment in providing sanctions for a breach of the Regulations.