
Law and Ethics Northern Ireland

1st Year Examination

May 2014

Exam Paper, Solutions & Examiner's Comments



NOTES TO USERS ABOUT THESE SOLUTIONS

The solutions in this document are published by Accounting Technicians Ireland. They are intended to provide guidance to students and their teachers regarding possible answers to questions in our examinations.

Although they are published by us, we do not necessarily endorse these solutions or agree with the views expressed by their authors.

There are often many possible approaches to the solution of questions in professional examinations. It should not be assumed that the approach adopted in these solutions is the ideal or the one preferred by us. Alternative answers will be marked on their own merits.

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

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Accounting Technicians Ireland
1st Year Examination: Summer Paper 2014
Paper: LAW & ETHICS (NI)

Wednesday 21st May 2014 - 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 SIX questions.

Section C answer ANY FOUR of the SIX questions.

If more than the required questions are answered in Section B and Section C, then only the correct number of questions, in the order filed, will be corrected.

Candidates should allocate their time carefully.

Cite any relevant authorities and/or statutory provisions to support your answers. Marks will be awarded for specific reference to sections of the Acts/Orders and decided cases. Answers should be illustrated with examples, where appropriate.

Question 1 begins on Page 2 overleaf.

SECTION A

Compulsory Question

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

QUESTION 1 – MONEY LAUNDERING AND DISCIPLINARY PROCESS

Marley is a trainee accounting technician employed by the firm of *Dickson and Shaw*. One of the clients of *Dickson and Shaw* is a restaurant called *Armadillo Street*. Marley has primary responsibility for the maintenance of this restaurant's financial accounts. In recent months Marley has become concerned regarding these accounts. In particular, she is anxious regarding the significant sales income being recorded by the restaurant, despite the fact that their supplier expenses are really low, the cost of their electricity is negligible, and the only staff members employed by the restaurant are the owners – who are not qualified chefs. Over the last month Marley has walked by the restaurant on her way home from work on a variety of occasions, and on all of these occasions the restaurant was closed. Despite this fact, Marley received a box of receipts and invoices from the owners of *Armadillo Street* yesterday recording income over the last month, and for evenings when the restaurant was shut.

Marley is suspicious that this restaurant may be a front for money laundering.

- (a) Define the term '*money laundering*'. (1.5 marks)
- (b) Discuss the elements of the offence of money laundering as established by The Proceeds of Crime Act 2002 (4.5 marks)
- (c) In the context of money laundering, financial institutions and other designed bodies are required to apply anti money laundering measures. Outline FOUR measures that they should take (4 marks)
- (d) Advise Marley of the obligation imposed upon her in relation to her suspicions regarding *Armadillo Street* restaurant and state the sanction that she may be exposed to in the event of non-compliance. (2.5 marks)
- (e) Marley fails to carry out her obligations and is subject to the Accounting Technicians Ireland disciplinary process. Outline:
- (i) The composition of the Complaints Committee. (1.5 marks)
 - (ii) What findings the Complaints Committee can make. (2 marks)
 - (iii) The purpose and composition of the Disciplinary Tribunal. (2 marks)
 - (iv) On what grounds Marley could appeal the findings of the Disciplinary Tribunal. (2 marks)

Total 20 Marks

SECTION B

Answer ANY FOUR of the SIX questions in this Section

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

QUESTION 2 – PARTNERSHIPS

Dexter is a partner in the firm of *Ruby & Jones Accountants*. At a recent partner's meeting the possibility of opening another branch of the firm was discussed. Dexter was asked to liaise with estate agents for the purpose of finding suitable premises. Last week Dexter received a call from an estate agency that he had been dealing with, informing him that the owners of a premises that he had already viewed and had an offer rejected on, had now agreed to a lease at the annual rental income he had offered. To avail of this deal Dexter was informed that the contract needed to be signed that day. Dexter tried to contact the other partners in the firm, but they did not answer their phones, so he signed the lease agreement on behalf of the firm. When the other partners in *Ruby & Jones Accountants* discovered what Dexter had done they contacted the estate agents to rescind the contract, on the basis that this action was outside the scope of his rights and authority as a partner.

- (a) List any FIVE rights of an active partner in a partnership. (5 marks)
- (b) Assess whether the contract created by Dexter is binding on the firm of *Ruby & Jones Accountants* by reviewing the authority of a partner to contract on behalf of the firm. (5 marks)

Total 10 Marks

QUESTION 3 – SHARES, SHAREHOLDERS AND DEBENTURE HOLDERS

- (a) Regan has just purchased shares in *Candy Cane Catering Plc*. These shares have a nominal value of £1.50, but the company issued 500,000 of these shares onto the market at a premium of £1.

Explain how this premium will be accounted for in the company's accounts and outline any TWO purposes for which this premium can be used by *Candy Cane Catering Plc*. (4 marks)

- (b) Regan is also considering purchasing debenture stock in *Candy Cane Catering Plc*. She has requested your advice regarding the distinction between being a company shareholder compared to a debenture-holder.

Draw a table outlining any THREE differences between shareholders and debenture-holders. (6 marks)

Total 10 Marks

QUESTION 4 – DIRECTORS AND DISQUALIFICATION ORDERS

Turner has been a director of *Hope Springs Motel Ltd* for the past five years. He was also a director in an interior design company, *Bright Interiors Ltd*. Unfortunately *Bright Interiors Ltd* was placed in insolvent liquidation last year, and the High Court has just imposed a Disqualification Order upon Turner for three years arising from this liquidation.

- (a) Advise Turner on the consequences of a Disqualification Order, and outline the THREE mitigating factors the Court may take into account to reduce the period of disqualification. (5 marks)
- (b) State what AGE you must be to become a director and FOUR other ways you can be removed from office. (5 marks)

Total 10 Marks

QUESTION 5 – MEETINGS

In the context of company meetings, explain the following:

- (a) The role of the Chairperson at company meetings. (3 marks)
 - (b) The rules regarding quorums at meetings. (4 marks)
 - (c) The meaning of the term *Proxy* and the rules regarding the appointment of a proxy. (3 marks)
- Total 10 Marks**

QUESTION 6 – VOLUNTARY LIQUIDATION

- (a) Outline the THREE circumstances in which a company can be voluntarily liquidated. (3 marks)
 - (b) Explain the procedure to be followed to effect a creditors' voluntary liquidation of a company. (7 marks)
- Total 10 Marks**

QUESTION 7 – MISCELLANEOUS

- (a) List any THREE pieces of information included in a company's annual return. (3 marks)
- (b) Outline any THREE characteristics of a fixed charge. (3 marks)
- (c) *A company is viewed as a separate legal entity to its members.*

Discuss the meaning of this statement and explain the consequences of separate legal personality.

(4 marks)
Total 10 Marks

SECTION C

Answer ANY FOUR of the SIX questions in this Section

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

QUESTION 8 – THE LEGAL SYSTEM

- (a) Identify and describe the THREE organs of State.

(6 marks)

- (b) Identify the THREE main sources of law in Northern Ireland and describe in detail one of these sources.

(4 marks)

Total 10 Marks

QUESTION 9 – CONTRACTUAL REMEDIES

Hayward signed a contract to purchase Rhett's house for £225,000. Following the signing of the contract Rhett informed Hayward that he was no longer in a position to sell the house, as he was made redundant after signing this contract and his bank has now withdrawn its mortgage offer to purchase a bigger home. Therefore, as he was no longer able to purchase another property, he could not now complete the sale of his home to Hayward.

- (a) Discuss the remedy of an Order for Specific Performance and determine the likelihood of Hayward obtaining such an Order from the Court to compel Rhett to complete the sale of his house.

(8 marks)

- (b) If Hayward fails to obtain such an Order and instead sues Rhett for damages, the law requires Hayward to mitigate his losses. Explain the meaning of the term *mitigation of losses*.

(2 marks)

Total 10 Marks

QUESTION 10 – UNFAIR DISMISSAL

Henley suffers from Crohn's disease and as a consequence he has been absent from work for the last twenty weeks. During this period he submitted medical certificates to his employers, attended an independent medical consultant at his employer's request, and has attended three different meetings with his employer's Human Resource Manager to discuss his illness and the possibility of him returning to work in the future. Last week Henley was shocked when he received a letter from his employer stating that his contract of employment was being terminated based on his lack of capacity to fulfil his employment duties. He has contacted you for advice regarding this letter:

- (a) Explain the right of an employer to dismiss an employee on the grounds of lack of capacity.

(2 marks)

- (b) Discuss the procedures that should be adopted by an employer to effect a fair dismissal of an employee. In light of this discussion assess whether Henley's dismissal is likely to be classed as fair or unfair, citing reasons for your answer.

(6 marks)

- (c) If Henley's dismissal is classed as unfair, state the remedies available to him under the terms of the Employment Rights (Northern Ireland) Order 1996.

(2 marks)

Total 10 Marks

QUESTION 11 – NEGLIGENCE AND DUTY OF CARE

- (a) Explain the meaning of the term *negligence*. (1 mark)
- (b) In the context of duty of care in negligence, explain how the following TWO tests operate in order to determine the existence of a duty to take reasonable care:
- (1) The neighbour principle (4 marks)
- (2) The modern day test (5 marks)
- Total 10 Marks**

QUESTION 12 – SALE OF GOODS AND SUPPLY OF SERVICES ACT

- (a) Define a contract for the sale of goods, pursuant to the terms of the Sale of Goods Act 1979 (5 marks)
- (b) *Sanders Aluminium Providers* has recently been contacted by a client and informed that they are being sued for the negligent installation of an aluminium door, which fell on top of the client when she was trying to open it. The action is being brought for a breach of the service obligations imposed under the Supply of Goods and Services Act 1982.
- List any TWO main service obligations imposed upon service suppliers under the legislation, and state any THREE remedies available for breaches of the Act. (5 marks)
- Total 10 Marks**

QUESTION 13 – MISCELLANEOUS

- (a) In the context of the operation of the doctrine of precedent, explain the meaning of the term *stare decisis*. (2 marks)
- (b) List any FOUR prohibited practices pursuant to the provisions of the Consumer Protection From Unfair Trading Regulations 2008. (4 marks)
- (c) In relation to redundancy, identify the FOUR rights of the employee. (4 marks)
- Total 10 Marks**

1st Year Examination: May 2014

Law and Ethics NI

Suggested Solutions and Examiner's Comments

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.

Statistical Analysis – By Question													
Question No.	1	2	3	4	5	6	7	8	9	10	11	12	13
Average Mark (%)	55%	67%	78%	67%	61%	40%	76%	47%	37%	51%	46%	36%	69%
Nos. Attempting	195	133	119	120	129	81	167	109	58	161	145	115	134

Statistical Analysis - Overall	
Pass Rate	65.2%
Average Mark	54.2%
Range of Marks	Nos. of Students
0-39	41
40-49	28
50-59	47
60-69	40
70 and over	42
Total No. Sitting Exam	198
Total Absent	60
Total Approved Absent	11
Total No. Applied for Exam	269

General Comments:

The standard overall was good with the majority of students attaining a pass mark and a number of these students gained a merit grade. There had been a marked improvement in the standard last year and this standard was maintained this year. The miscellaneous questions in Sections B and C proved to be popular and clearly benefited the students by providing them with additional choices.

The compulsory question (Question 1) was well answered this year and students who failed to pass this question were less likely to attain an overall pass grade in the exam. Students generally performed better in Section B (company law) in particular questions 3, 4 and 7 than in Section C (General Law). The standard of answers to question 11 (Tort law) was better than in previous years, however many students displayed significant gaps of knowledge in their answers to questions from Section C in general.

General advice:

1. Answer only the question that is being asked and attempt each part
2. Avoid one word answers unless the answer so requires it.
3. If referring to case law always refer to some facts of the case.

Exam Presentation:

4. Use blue or black ink and start the answer to each question on a new page
5. When answering a question divided into separate parts leave a small gap between each answer

Examiner's Comments on Question One

The standard of answers was quite good. Many students gained full or nearly full marks, but students are reminded to revise both chapters from the manual as some students scored well in Parts A-D but not Part E (or vice versa).

Part A: The majority of students provided an accurate definition

Part B: Many students discussed the process of laundering rather than the elements but marks were still awarded. Some students referred to the three separate categories of offences relating to money laundering

Part C: This was well answered with most students providing four measures

Part D: The majority of students correctly stated that she was obliged to report to SOCO and stronger students also stated that she should report to Accounting Technicians Ireland. Students lost marks for by not identifying the correct criminal sanction.

Part E: In part (i) and (iii) the word 'composition' appeared to confuse students. Students answered parts (ii) and (iv) well.

Solution to Question 1

- **A. Money Laundering:** money laundering is the way in which criminals attempt to turn cash and other assets obtained from criminal activities into genuine assets through the financial services system and through established businesses in an attempt to disguise the original source **(1.5 marks)**
- **B. Elements of the offence:** the offence is regulated by The Proceeds of Crime Act 2002- money laundering arises where a person: (1) conceals or disguises the true nature, source, location, disposition, movement or ownership of property or rights in relation to property connected to criminal activity, (2) converts criminal property from one form into another e.g. from cash into property (3) transfers criminal property or removes it from the UK/Northern Ireland **(4.5 marks)**
- **C. (1)** Establish identity of customer and examine and retain verifying documents (2) monitor customer accounts for suspicious activity (3) staff must be trained as to how to identify and deal with transactions that may be related to money laundering (4) Companies should nominate a designated officer that staff can go to and disclose suspected money laundering transactions **(4 marks)**
- **D. Marley** is obliged to report any suspicious transaction that may involve money laundering to the designated officer who will report to Serious Organised Crime Agency (SOCA). A failure to report can result in a criminal prosecution and up to 5 years imprisonment and a fine **(1.5 mark)**. She should also report to Accounting Technicians Ireland, as her regulatory body **(1 marks)**
- **E. (1)** Composition- it is made up of not less than five persons with the majority not members and appointments are for 5 years. **(1.5 marks)** (2) (i) take no action (ii) place member on probation or consent order' (iii) refer to Disciplinary Tribunal **(2 marks)** (3) The purpose is to hold a formal public hearing with the member represented who can give evidence. It is made up of not less than 9 members and at least 3 qualified lawyers and 3 members. **(2 marks)** (4) (i) Wrong (ii) Excessive (iii) Procedural error (iv) Costs order excessive **(2 marks)**

Examiner's Comments on Question Two

This question produced a wide variation of answers. Students generally scored better in Part (A) than Part (B).

Part A:

The standard of answers was generally quite high and students were usually able to identify at least 5 rights. Students are advised to recap the difference between the rights of partners and the duties owed by directors to a company as these were confused in some cases.

Part B:

This Part was not well answered. Stronger students correctly discussed the implied authority and liability of a partner. It is important for students to provide reasons when answering questions of this type, rather than simply stating 'yes' or 'no' without giving any reasons.

Solution to Question 2

- **A. Rights of a Partner:** (1) to be treated by the other partners in good faith and with mutual confidence, (2) to be involved in the management of the firm and in key decision making, (3) to share in the profits of the firm as per the partnership agreement, as well as the losses of the firm on a joint and several basis, (4) to not be expelled from the partnership, unless there is evidence that the partner is not acting in good faith or acting in breach of his duties, (5) to veto the introduction of a new partner to the firm – this decision requires unanimous approval of all existing partners, (6) the right to attend and vote at all partnership meetings, (7) the right to examine the books and financial statements of the partnership, and (8) to be indemnified by the firm against all liabilities incurred in the ordinary course of partnership business (**any 5 = 5 marks**)
- **B. Authority of a Partner:** all partners are classed as agents of the partnership and in general they have the actual authority to create contracts on behalf of the firm – if this authority is stated in the Deed of Partnership it is classed as express actual authority, if not stated, it is classed as implied actual authority – this is often known as ostensible authority – and allows a third party to assume that a partner has the right to contract on behalf of the firm – even if a partner acts outside the scope of his actual authority the contract may still be binding upon the firm provided (a) the contract is created in the name of the firm, (b) it is connected with the business of the firm, and (c) there is no reason for the third party to be suspicious that this contract is not in the normal course of business – relevant case law includes *Mercantile Credit Co Ltd v Garrod (1962)* (**4 marks**) – therefore, the contract created by Dexter is binding on the firm of *Ruby & Jones Accountants* as he was acting within his actual authority, whether express or implied (**1 mark**)

Examiner's Comments on Question Three

This question was generally well answered.

Part A:

The wording of the question caused some confusion and a minority of students referred to the rules in relation to selling shares at a discount. Answers that correctly identified the rules and exceptions to selling shares at a discount were accepted. The majority of students could explain how a premium is accounted for and could provide two uses for this premium.

Part B:

This part was very well answered by the majority of students who identified at least 3 differences. Many students provided more than three differences. While it is encouraging to see that students have this knowledge, please remember that extra marks cannot be gained and thus it is best (in an exam) to answer the question that is asked.

Solution to Question 3

- **A. 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 CA 2006 s.610 this account can only be utilised as follows: (1) to write off the expenses relating to those shares– (2) to write off the commission paid on the issue of those shares or (3) the paying of any new shares to be issued to members as bonus shares **(any 2 x 1.5 marks = 3 marks)**
- **B. Differences between Shareholders and Debenture-Holders:**

	SHAREHOLDER	DEBENTURE HOLDER
ROLE	Member and creditor of a company	Creditor of a company
RIGHTS	Members have rights 'in' relation to the company	Creditors have rights 'against' company
PARTICIPATION	They are involved in the company as they have the right to attend meetings, and possess voting rights that can be exercised at these meetings (only ordinary shareholders have the right to vote)	They have no role in the company and cannot attend company meetings or vote (although they may include a restrictive covenant in the debenture – limiting the rights of the company until the loan is repaid)
COST	Shares cannot be sold at a discount	Debentures can be sold below their nominal value i.e. at a discount
CAPITAL GROWTH	Shareholders have a right to capital growth (if there is any surplus capital on liquidation)	Debenture holders have no right to capital growth. They only have a right to repayment of the principal sum plus interest.
RETURN	Shareholders have a right to a dividend payment if the company is making a profit, and it is declared. If not the shareholders will receive no return	Debenture holders have a right to repayment plus interest on the loan even if the company is making losses
RISK	Shareholders are the last to be paid on liquidation of a company so they carry a higher risk	Debenture holder's debt is satisfied before shareholders so their financial investment is considered more secure

(any 3 x 2 = 6 marks)

Examiner's Comments on Question Four

The question was answered well in some parts but many students showed gaps in their knowledge.

Part A:

The majority of students could explain what a disqualification order was but could not correctly identify the criminal sanctions that could be imposed or the minimum length of time a director may be disqualified for. Stronger students could list at least one mitigating factors. Some students were confused as to what mitigating factors would be relevant and instead referred to mitigating factors in general, for example his potential or hypothetical personal and family circumstances.

Part B:

Many students did not realise that there is a minimum age as prescribed by legislation and would benefit by revising this detail. Many students could identify ways to be removed from office.

Solution to Question 4

- **A. Disqualification Order: consequences** – when this Order is imposed a directors can be restricted from acting directly or indirectly as a director for a period of up to five years on summary offence or up to 15 years if convicted of an indictable offence **(2 marks)** – mitigating factors: the applicant may be entitled to a reduced period of disqualification if the director can prove that (1) he acted honestly and reasonably (2) he lost his own money and did not make a personal gain (3) unlikely to reoffend **(3 marks)**
- **B. Age of a Director:** According to CA 2006 s. 157 a Director must be 16 years or older **(1 mark)** a director can be removed from office- (i) Resign (ii) Retire (iii) Period of appointment expire and they are not re-elected (iv) Removed from office by passing of Ordinary Resolution at General Meeting **(4 marks)**

Examiner's Comments on Question Five

This question was quite well answered with some students gaining full marks.

Part A:

Students could explain the role of the Chairperson, but are encouraged to provide more detail in their answers.

Part B:

The majority of students understood the requirement to have a minimum number of members present but some students failed to identify the number or the time limit within which they should be there.

Part C:

This Part was not as well answered and students are encouraged to revise this topic.

Solution to Question 5

- **A. Chairman:** (1) They are responsible for running the meeting and ensuring that the meeting covers all the topics on the agenda, (2) they oversee voting at meetings, (3) they sign the minutes of previous meetings and once signed they are *prima facie* records of those meeting, (4) they ensure that the meeting is quorate, and (5) they maintain order during the meeting and have the power to dissolve or adjourn the meeting, if it becomes disorderly **(any 3=3 marks)**
- **B. Quorum:** This is the minimum number of people that must attend a meeting in order for it to be valid – a company's quorum is generally stated in its Articles of Association –minimum in public and private companies is 2 persons – the quorum may be present in person or by proxy – if there is no quorum within 30 minutes of the commencement of the meeting then the chairperson must adjourn the meeting to a later date **(4 marks)**
- **C. Proxy:** This is both a document appointing and the appointment of a person to attend, vote, and speak on behalf of another shareholder at a meeting– company law requires that the form nominating a person as proxy must be received by the company at least 48 hours prior to the meeting – proxies only apply to a company having share capital – and the ability to appoint a proxy must be authorised by the Articles of Association **(3 marks)**

Examiner's Comments on Question Six

This was a relatively straightforward answer but was poorly answered by many students who attempted it.

Part A:

This Part was quite well answered but some students incorrectly discussed the three types of liquidation rather than listing the three statutory circumstances in which a company can enter into voluntary liquidation.

Part B:

Many students failed to provide sufficient detail as to the procedure or provided irrelevant answers such as the priority that the debts are paid off following liquidation. This is a very important topic in the course and students are encouraged to carefully revise this chapter and ensure that they understand the different concepts and procedures.

Solution to Question 6

- **A. Voluntary Liquidation:** a company may be voluntarily liquidated in any one of THREE circumstances, namely: (1) if the period fixed for the duration of the company expires, (2) if the company resolves by special resolution to liquidate voluntarily (members' voluntary liquidation), and (3) if the company resolves that it cannot carry on business because it is insolvent and a resolution is then passed to liquidate (creditors' voluntary liquidation) **(3 = 3 marks)**
- **B. Creditors Voluntary Liquidation:** (1) a company unable to make a declaration of solvency because of insolvency must initiate a creditors' voluntary liquidation, (2) the members of the company must pass a special resolution to liquidate the company, (3) the company must then call a meeting with the creditors within 14 days of the resolution being passed to commence a creditors' voluntary winding up, (4) notice of the creditors' meeting must be sent to all the creditors at least seven days before the meeting and also be advertised in the Belfast Gazette and two daily newspapers circulating in the area, (5) at the creditors meeting the directors must lay before it a statement of affairs showing particulars of the company's assets, debts and liabilities, as well as a list of the creditors and the debts owed, and explain to the creditors that the company is insolvent and cannot pay its debts, (6) a vote is then taken by the creditors to agree to a creditors voluntary liquidation, and a liquidator will be appointed, and (7) a Liquidation Committee may also be appointed to assist the liquidator **(7 marks)**

Examiner's Comments on Question Seven

This question was attempted by many students and most answered it well.

Part A:

The majority of students were able to identify at least three pieces of information included in the annual return, however some students incorrectly referred to the company's annual accounts and the documents to be contained therein.

Part B:

This was well answered in general. Some students provided more than 3 characteristics and this was not necessary.

Part C:

Stronger students were able to explain in depth and identify all the consequences of a separate legal personality.

Solution to Question 7

- **A. General information included in the annual return:** (1) the company name, address, registered number (2) the location where the register of members is kept, (3) details pertaining to shares and company debt, (4) details of company members and their particular shareholdings, and (5) particulars of the Directors and Secretaries **(any 3 = 3 marks)**

- **B. Characteristics of a Fixed Charge:** (1) this is where a company borrows money and secures the borrowing on a fixed asset, (2) this charge attaches to a fixed asset from the moment of creation, thereafter the borrowing company cannot deal in the asset (sell, alter, use to create a further charge) without the consent of the charge-holder, (4) this charge ranks in priority to other charges, and (5) it is usually created by means of either a legal or equitable mortgage (lender's beneficial interest in the property is registered on the title documents/or the lender takes possession of the title documents until the debt is repaid) **(any 3 = 3 marks)**
- **C. Separate Legal Entity:** This concept means that a company has a separate legal status from its members – and in reality has a distinct personality from the natural persons who set up the company – this was first recognised in the case of *Salomon v Salomon & Co Ltd (1897)* **(1 mark)** – this separate personality means that a company can: (1) own their own property, (2) enter in contractual relations with either natural persons or other companies, (3) commit crimes and be held responsible for such crimes, (4) have perpetual existence, (5) be sued or sue other persons – and (6) in addition, this separate personality also gives the shareholders of the company limited liability **(any 3 = 3 marks)**

Examiner's Comments on Question Eight

Part A:

There was confusion between the organs of State with the divisions and sources of law and this is a topic that should be revised. Students who correctly identified the organs of State went on to perform well in Part B also.

Part B:

The majority of students correctly identified at least one source of law but did not provide sufficient detail in their description. There was some evidence of confusion with organs of State, divisions of law, and the court structures.

Solution to Question 8

- **A. The three Organs of State include the Legislature, the Executive and the Judiciary (1.5 marks)** – (i) The Legislature- is the law making body and is made up of the Member of Parliament and the House of Lords (in NI the Legislature is made up of the elected members of the NI Assembly).The Assembly/Parliament Members vote in new laws and can repeal or change existing laws. **(1.5 marks)** (ii) The Executive-consists of the Crown and Government (i.e. Queen, Prime Minister and Ministers) or in Northern Ireland the First Minister, deputy First Minister and Ministers. They formulate policies for implementation of the laws passed by the elected representatives **(1.5 marks)** (iii) The Judiciary- **(1.5 marks)**
- **B. Three main sources- Legislation, Case Law and EU Law (1.5 marks)** –Detail any one (1) Legislation is the most important source of law- legislation can be changed or amended or repealed by Parliament/NI Assembly who can also make new legislation. Legislation consists of both primary and secondary legislation (2) Case Law- is law made by judges in a particular case and then applied in other cases developing a precedent- it is usually created when the legislation is silent on the matter i.e. the answer cannot be found in legislation (3) EU Law- the creation of the EU meant that they developed a Parliament which can draft laws which apply to all the EU countries- there is primary legislation known as Treaties and secondary legislation known as Regulations. EU law is the highest law and if UK says something different to EU law, EU law prevails. **(any one for 2.5 marks)**

Examiner's Comments on Question NinePart A:

Most students correctly defined an Order for Specific Performance and reached the correct conclusion. Stronger students referred to case law and the circumstances in which the Order is not given in reaching their conclusion. Those who performed less well tended to reach the incorrect conclusion due to a lack of understanding as to when this Order is given or not given.

Part B:

Students who performed well correctly defined the term mitigation of losses. However, students are encouraged to revise this area as there were many who gave incorrect definitions

Solution to Question 9

- **A. Order for Specific Performance:** this is where the court orders the defaulting party to perform their specific obligations under the contract on the terms agreed **(1 mark)** – the courts will only do this when damages are an inadequate compensation and importantly, where the order would not cause undue hardship on the party in breach – the Court will never grant an order for specific performance in the following contracts: (1) Contracts for Personal Services: these would include employment contracts, or contracts to perform at a specific concert/event or to take part in a film or television project – the rationale behind this exclusion is that such an order would be analogous to forced labour and is futile where the other party simply refuses to perform or performs to an inadequate standard (2) Contracts to advance money, (3) Where the court cannot supervise performance of the contract (where constant supervision by a court is required), (4) Where one of the parties is an infant/minor, and (5) Where the contract is neither fair nor just – and where the conduct of the party seeking specific performance is questionable **(6 marks)** – conclusion that it is unlikely that the Court will grant the Order as this may cause hardship to Rhett and damages will adequately compensate Hayward **(1 mark)**
- **B. Mitigating of Losses:** this means that an injured party in the event of a breach of contract is required to take steps to mitigate or reduce the losses they are likely to be exposed to following the breach – the injured party is only required to take reasonable steps in this scenario – if after taking reasonable steps the loss is not mitigated then he is entitled to compensation for the actual loss – a failure to take steps to reasonably mitigate losses will result in a reduction of any damages awarded **(2 marks)**

Examiner's Comments on Question TenPart A:

This was generally well answered with some students referring correctly to case law

Part B:

The majority of students failed to go into sufficient detail and some did not refer to the procedures at all. Many students reached the correct conclusion but did not apply the procedures and case law. Therefore, they could not gain full marks.

Part C:

The majority of students correctly identified the three main remedies and stronger students referred to the maximum amounts of compensation available.

Solution to Question 10

- **A. Lack of Capability:** this relates to the skills, aptitude, health and the mental and physical ability of the employee to perform the required tasks as stated in their employment contract – before a decision is taken to dismiss in this situation alternative options must be considered – a dismissal may be fair if based on medical information the employee's prospects of improving are next to none *James v Waltham Holy Cross UDC(1973)* **(2 marks)**
- **B. Fair Procedures:** the employer must STEP ONE set out in a letter (1) the employee's alleged conduct or other circumstances (2) give the employee a copy of the letter and invite them to attend a meeting STEP TWO - meeting to take place before dismissal but after employee receives letter and has time to consider response – employee must make all reasonable attempts to attend meeting and after meeting employer notify employee and their right to appeal STEP THREE- employee inform employer if wish to appeal- another meeting takes place and employee informed of decision after meeting – employee has right to be accompanied by someone to both meetings **(4 marks)** – conclusion that Henley's employers have not employed fair procedures as there was no notification to him during his period of absence that the company was considering dismissing him based on his incapacity – and no warning system was invoked against him in relation to his prolonged absence – in addition, there was no disciplinary meeting, employing the procedures outlined above **(2 marks)**
- **C. Remedies:** (1) reinstatement: where the employee is restored to the same position of employment with the same employer and treated as if they had not been dismissed and are restored to exactly the same job with the same rights and conditions, (2) re-engagement: when the employee is restored to employment with the employer but on terms and conditions as set down by the Court/Tribunal – this could be in a different job role/position/roster etc, or (3) compensation – between £12,900 and £72,300 **(2 marks)**

Examiner's Comments on Question Eleven**Part A:**

Most students provided a correct answer here. Many students went into great detail and as only 1 mark was available this was unnecessary..

Part B:

(1) The vast majority of students scored well in this part and identified the relevant case law.

(2) Most students scored well and were able to identify the relevant case. However, many students failed to give sufficient detail when referring to the test as prescribed in the identified case.

Solution to Question 11

- **A. Negligence:** This is defined as the unintentional breach by one party of a legal duty to take reasonable care that causes loss or damage to the injured party **(1 mark)**
- **B.(1) Neighbour Principle:** this was original test for duty of care and arose from the decision of Lord Atkins in *Donoghue v Stevenson (1932)* – in effect the principle states that you are liable for your negligent acts to your neighbour – this is a person so closely and directly connected to you that you should have them in mind as affected by your acts or your acts of omission (including words) – examples of where the relationship arises: solicitors/clients, doctors/patients, accountants/auditors/clients, employers/employees **(4 marks)**
- **B.(2) Modern Day Test:** the neighbour principle has been expanded in recent years in *Caparo Industries Plc v Dickman (1990)* – which established the modern day/three-tier test to determine the existence of a duty of care – this test asks: (1) was the harm reasonably foreseeable: this means that the Court must determine whether the defendant could have foreseen that his act or omission would cause harm to the plaintiff, (2) whether there a relationship of proximity between the parties: in this scenario the Court reviews the basis of the relationship between the parties, and determines whether it is proximate enough from a legal perspective to impose liability, such as in *Swinney v Chief Constable of Northumbria Police 1999*), and (3) whether considering the circumstances, is it fair, just and reasonable to impose a duty of care: in this scenario the Court takes into consideration any special circumstances in the case and the impact of its decision on public policy, such as in *Hill v Chief Constable of West Yorkshire (1988)* **(5 marks)**

Examiner's Comments on Question Twelve

This question was not very well answered in general.

Part A:

Many students failed to define a contract for the sale of goods correctly. Some discussed the different types of contracts that may exist generally such as unilateral and bilateral contracts but did not provide a clear definition. Stronger students referred to the transfer of goods for a price but many failed to identify the elements in sufficient detail to be awarded full marks.

Part B:

Some students scored well and identified at least two main service obligations and referred to some of the possible remedies. However, many students incorrectly listed the implied terms as contained in the Sale of Goods Act 1979.

Solution to Question 12

- **A. Sale of Goods: Section 2(1) SGA 1979** – a contract in which a seller transfers or agrees to transfer ownership of goods to a buyer “for a money consideration called the price” **(0.5 marks)** – 3 elements: (1) transfer of property in goods (excludes land, shares or a contract for services) – the term “goods” covers all chattels personal, including existing, future, specific and unascertained goods **(1.5 marks)** – (2) the contract must be for a sale – a transfer of goods by way of a pledge, mortgage or loan (or consumer credit contracts) is precluded under the Act, as are gifts **(1.5 marks)** – (3) the goods to be sold must be given a price tag or a price – may include a trade-in situation provided it involves a price tag on the new item or a specific allowance for the traded-in item **(1.5 marks)**
- **B. Obligations upon Service Providers:** (1) a service provider must have the necessary skill to carry out the service, (2) they must supply the service with reasonable care, skill and diligence, (3) to use materials that are sound and reasonably fit for purpose, (4) to supply goods that are of satisfactory quality, (5) to supply the service within a reasonable period of time at a reasonable price **(any 4 = 2 marks)** – remedies available: (1) repudiation of the contract, where there has been a breach of condition, (2) repair/replacement: provided that the repair or replacement does not cost more than was originally paid for the item, (3) refund – this depends upon when the good was purchased, and (4) compensation, where the consumer incurs damage or (5) specific performance **(any 3 = 3 marks)**

Examiner's Comments on Question Thirteen**Part A:**

Many students provided a good definition and showed a good understanding of the concept of precedent in general.

Part B:

This was well answered with students able to list at least four practices. Some students confused this with the implied terms under the Sale of Goods Act 1979, however.

Part C:

This was very well answered with a large majority of students scoring full marks.

Solution to Question 13

- **A. *Stare Decisis*:** this means “let the decision stand” – it means that the decision of a higher court stands over or binds the decision of a lower court, when dealing with similar legal issues **(2 marks)**

- **B. Prohibited practices include (but are not limited to):** (1) displaying a trust mark or equivalent without having authorisation (2) falsely stating product only available for limited period (3) stating product can be legally sold when it cannot (4) claiming that trader is about to cease business or move premises (5) falsely stating it can cure illness (6) offering a competition and then not award the prizes (7) falsely stating that after sales service is available in state other than where it was bought (8) creating impression that consumer cannot leave premises until contract entered into (9) conducting visits at consumer's home and ignoring requests to leave (10) make persistent solicitations by telephone or fax or other which cannot be justified to enforce contract (11) telling consumer that if he does not enter contract then his job is at risk **(any 4 x 1 = 4 marks)**
- **C. Redundancy: Employee Rights –** (1) right to statutory minimum notice (2) right to redundancy payment (3) right to time off during notice period (4) right to be individually informed **(4 marks)**