
Law & Ethics

Republic of Ireland

1st Year Examination

August 2012

Paper, Solutions & Examiner's Report



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Accounting Technicians Ireland

1st Year Examination: Autumn Paper 2012

Paper: LAW & ETHICS (ROI)

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

INSTRUCTIONS TO CANDIDATES

For candidates answering in accordance with the law and practice of the Republic of Ireland.

Section A is a compulsory question and must be attempted.

Section B answer ANY FOUR of the FIVE questions.

Section C answer ANY FOUR of the FIVE questions.

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

Candidates should allocate their time carefully.

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

Question 1 begins on Page 2 overleaf.

Compulsory Question

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

QUESTION 1

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

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

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

- A. Discuss the elements of the offence of insider trading, and determine whether Sam is guilty of this offence. Comment also on the sanctions likely to be imposed upon Sam if she is found guilty of insider trading.
- B. Explain any **THREE** of the five fundamental principles of the Accounting Technicians Ireland Code of Ethics in order to achieve the objectives of the profession (**3 x 2 marks**).
- C. Outline any **FOUR** sanctions that can be imposed upon Sam by the Complaints Committee of Accounting Technicians Ireland, if they determine that Sam has breached their Code of Ethics.

12 Marks

6 Marks

2 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**

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

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

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

4 Marks

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

6 Marks**Total 10 Marks****QUESTION 3**

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

Total 10 Marks

QUESTION 4

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

3 Marks

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

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

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

5 Marks

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

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

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

- A. When is the company obliged to lodge an annual return with the Companies Registration Office (CRO)?

3 Marks

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

3 Marks

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

4 Marks**Total 10 Marks**

QUESTION 6

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

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

1 Mark

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

9 Marks

Total 10 Marks

SECTION C

Answer ANY FOUR of the FIVE questions in this Section

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

QUESTION 7

A. Outline the civil jurisdiction of the District Court (**2.5 marks**), the Circuit Court (**2.5 marks**) and the High Court (**3 marks**) in Ireland.

8 Marks

B. Explain the jurisdiction of the "Commercial Court".

2 Marks

Total 10 Marks

QUESTION 8

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

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

4 Marks

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

6 Marks

Total 10 Marks

QUESTION 9

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

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

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

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

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

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

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

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

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

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

QUESTION 11

- A. Define an agent, and explain the TWO main classifications of agents, providing an example of each.

5 Marks

- B. Alex has been renting a house in Waterford city from Maxwell for the past five years. Two weeks ago the river adjacent to Alex's house burst its banks and flooded the ground floor of the house. Alex attempted to contact Maxwell to explain what had happened but Maxwell's phone kept going to a message which stated that the phone was out of coverage at that time and no message could be left. Since this incident Alex had tried to call Maxwell every day but has kept getting the same message. In the interim Alex hired a number of different contractors to pump the water out of the house and to remove the rotten floorboards and flooring. To date Alex has paid these contractors €800.

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

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

5 Marks**Total 10 Marks**

1st Year Examination: August 2012

Law & Ethics (ROI)

Suggested Solutions

Students please note: These are suggested solutions only; alternative answers may also be deemed to be correct and will be marked on their own merits.

Solution to Question 1

- A. Insider Trading: definition and overview of the prohibition against insider trading – effect of abuse of price sensitive information on share prices – artificiality – manipulation – effect on the integrity of the stock market **(1 mark)** – action is now generally regulated by the Investment Funds, Companies and Miscellaneous Provisions Act (IFCMPA) 2005, which transposed an EU Directive (Directive 2003/6/EC) – the 2005 Act prohibits the use of the inside information, the disclosure of inside information and recommending or inducing another to use the inside information – new definitions: (1) inside information: information of a precise nature relating directly or indirectly to one or more issuers of financial instruments or a financial instrument(s), which has or has not been made public and which, if were made public, would be likely to have a significant effect on the price of those financial instruments or on the price of related derivative financial instruments or information that a reasonable investor would be likely to use as part of the basis of the investor's investment decisions; (2) information of a precise nature – relates to information that: (a) indicates: (i) a set of circumstances which exists or may reasonably be expected to come into existence, or (ii) an event which has occurred or may reasonably be expected to occur, and (b) is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or events, as the case may be, on the prices of financial instruments or related derivative financial instruments; (3) financial instrument' is defined to include 'transferable securities'; (4) a person may be defined as an insider as a consequence of their of membership of professional bodies (especially those who issue financial instruments), by virtue of their capital holding, through employment or professional duties; or through criminal activity **(7 marks)** – penalties for breach of the legislation: civil liability – compensation to any party to the transaction who sustained a loss; and an account to the company for all unlawful profit made, statute of limitations is 2 years – criminal liability – on summary conviction a term of imprisonment not exceeding 12 months and/or a fine not exceeding €5,000; on indictment a term of imprisonment not exceeding 10 years and/or a fine not exceeding €10m; and a prohibition from any dealing for 12 months from the date of conviction **(2 marks)** – conclusion that both Sam is guilty of insider trading – as she purchased shares when she was in possession of information of a precise nature likely to impact the value of shares **(2 marks)**

Solution 1 (Cont'd)

- B. Accounting Technicians Ireland Code of Ethics fundamental principles: (1) integrity – this principle requires that the members should be straightforward and honest in all professional and business relationships, **(2 marks)** (2) objectivity – this principle requires that members should be fair and should not allow bias, conflict of interest or undue influence of others to override professional or business judgments, **(2 marks)** (3) professional competence and due care – this principle requires that members have a continuing duty to maintain professional knowledge and skill at a level required to ensure that a client or employer receives the advantage of competent professional service based on current developments in practice, legislation and techniques. Members are required to act diligently and in accordance with applicable technical and professional standards when providing professional services, **(2 marks)** (4) confidentiality – this principle requires that members should respect the confidentiality of information acquired as a result of professional and business relationships and should not disclose any such information to third parties without proper and specific authority or unless there is a legal or professional right or duty to disclose. Confidential information acquired as a result of professional and business relationships should not be used for the personal advantage of the member concerned or third parties, **(2 marks)** and (5) professional behavior – this requires that members should comply with relevant laws and regulations and should avoid any action that discredits the profession **(2 marks) (any 3 x 2 marks = 6 marks)**
- C. Complaints Committee Sanctions: (1) take no further action against the member, (2) place the member “on probation” for up to two years, (3) make a Consent Order against the member, such as: (a) exclusion or suspension from membership of Accounting Technicians Ireland, (b) a declaration that the person is unfit to be a member, (c) disqualification from examination(s) of Accounting Technicians Ireland (in the case of a student member), or (d) the imposition of a reprimand or a severe reprimand (fine) **(any 4 x 0.5 marks = 2 marks)**

Solution to Question 2

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

Solution 2 (Cont'd)

- respect of the retiring partner **(2 marks)** – conclusion that Lloyd may be liable for the €200,000 borrowed by Charles and George from the partnership's bank in April 2012 if he failed to notify the bank of the fact of his retirement **(1 mark)**

Solution to Question 3

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

- (any 5 x 2 marks = 10 marks)**

Solution to Question 4

- A. Ineligibility: (1) a company, (2) a bankrupt person, (3) the company's auditor, (4) a person subject to a Restriction Order, and (5) a person subject to a Disqualification Order **(any 3 = 3 marks)**
- B. (1) Substantial Property Transaction: Section 29 CA 90 – this can be defined as the purchase by a the company of a non-cash asset from a director/connected person or the acquisition by a director of a non-cash asset from the company – whose value exceeds €63,500 or 10% of the company's assets – in this situation before the acquisition can take effect the company must obtain approval to proceed with the transaction by an ordinary resolution of its shareholders – the Director must disclosure the conflict to the Board at the meeting where the contract is proposed or the first meeting after he becomes interested **(5 marks)**
- B. (2) Conclusion: Staunton has breached this duty as he did not disclose his holding in the vendor company and failed to get approval for the transaction by an ordinary resolution of the shareholders – Staunton's failure to comply would leave him liable to a fine and to account for any personal gain from the transaction, and to indemnify the company for any loss suffered – such a breach may also lead to a possible disqualification order against Staunton **(2 marks)**

Solution to Question 5

- A. Section 60 of the Company Law Enforcement Act 2001 introduced the Annual Return Date (ARD) – this is a readily ascertainable date on which a company's annual return must be submitted to the Registrar of Companies each year – as a company incorporated after 2001 the ARD of *Creative Knitwear Ltd* is six months after the date of incorporation of the company **(3 marks)**
- B. Audit Exemption Requirements: (1) turnover does not exceed €7.3m, (2) assets do not exceed €3.65m at the end of its financial year, (3) average number of employees does not exceed 50, (4) the business is not a subsidiary, bank or insurance company, and (5) the annual return of the company for the year is up to date, having been filed on time with the CRO **(any 3 = 3 marks)**
- C. Accounting Records: a company is under a duty to keep up to date accounting records sufficient to: (1) show and explain the financial transactions of the company, (2) disclose with reasonable accuracy at any time, the financial position of the company, (3) enable the directors to ensure that any accounts required to be prepared comply with the requirements of the Companies Acts – these accounting records include the (1) Balance Sheet/Statement of Financial Position as of the last day of the financial year, (2) a Profit and Loss Account/Income Statement/Statement of Comprehensive Income, (3) the Directors' Report, and (4) the Auditors' Reports – these accounts need to be kept for a minimum period of 6 years from the date to which they relate **(4 marks)**

Solution to Question 6

- A. Members Voluntary Liquidation/pre-requisites: in order to liquidate by a resolution of the members the pre-requisite is that the company is solvent **(1 mark)**
- B. Procedure: a directors meeting must take place at which a resolution is passed to voluntarily liquidate the company – a statutory declaration of solvency must also be completed by the directors to the effect that the company is solvent and will be in a position to pay off all debts arising in the liquidation process (if a false declaration is made then the directors assume personal liability for the company's debts arising from the false declaration) – a report of an independent person must then be completed verifying the authenticity of the statutory declaration of solvency **(5 marks)** – then a meeting of the shareholders must be called (at which the declaration of solvency and the report of an independent person are presented to them) asking them to pass a resolution to liquidate the company – if this resolution is passed a voluntary liquidator is appointed to sell off the assets, pay the company debts and distribute the residue in accordance with the terms of the company's Articles of Association and company law – when this is effected the liquidator will then instruct the CRO to strike the company off the register – and effectively bring it to an end **(4 marks)**

Solution to Question 7

- A. District Court – this is a court of local jurisdiction – that deals with civil issues arising within the context of that jurisdiction – it has the authority to deal with claims for compensation in contract and civil wrongs – provided the damages sought are less than €6,350 – it also deals with issues such as the granting of intoxicating liquor and night-club licences, the granting maintenance orders in family law (less than €150 per child or €500 per spouse per week), and minor landlord/tenant disputes **(2.5 marks)**
- Circuit Court – this court has 2 permanent locations (Dublin and Cork) and otherwise is a travelling court – it deals with claims for compensation in contract and civil wrongs where the compensation sought is between €6,350 and €38,000 – it also deals with landlord/tenant disputes, and has the power to deal with judicial separation & divorce matters (provided matters are not complex) **(2.5 marks)**
- High Court – this court can award unlimited damages in contract and civil wrong cases – it also deals with succession, trusts, wardship/wards of court, company law, defamation cases, bankruptcy, constitutional cases, judicial separation and divorce matters (where matters are complex and the valuation of marital assets are difficult to ascertain) – the High Court also has supervisory jurisdiction over inferior courts, administrative bodies & persons with quasi judicial functions by way of judicial review **(3 marks)**
- B. Commercial Court: The High Court also operates a *High Court Commercial List* – known colloquially as the Commercial Court – this Court has the jurisdiction to deal with (1) current commercial disputes where the claim, or counterclaim, is not less than €1 million, (2) any application or proceedings under the Arbitration Acts where the value of any claim or counterclaim is not less than €1 million, (3) any legal dispute relating to patents, trademarks, copyright, industrial designs or a case relating to 'passing off', and (4) any appeal or application for a judicial review of a previous decision or determination that a

Solution to Question 8

- A. Methods of Contractual Discharge: (1) performance of contractual obligations, (2) agreement, supported by consideration, (3) notice, as per the terms of the contract, subject to legislation, and what the Court considers reasonable, (4) breach of a contractual condition, and (5) operation of the law (a) death, (b) bankruptcy, (c) insanity, and (d) frustration **(any 3 = 3 marks)** – Grethen’s contract has been discharged by a frustrating event (the weather) which was unforeseeable, uncontrollable and prevented performance of the contract **(1 mark)**
- B. Damages: in relation to the quantum of damages recoverable the rule is that the breaching party is only liable to pay damages in relation to losses arising naturally and those that are within the contemplation of the parties – parties will not be compensated for all losses suffered – where the loss is considered ‘too remote’ from the breach and unforeseeable – any abnormal consequences where the wrong-doer has actual knowledge of these abnormal consequences may be recoverable, Victoria Laundry Ltd v Newman Industries Ltd (1949) – issue of whether the consequence should have been ‘*within the reasonable contemplation of the parties*’ at the time of the contract, The Heron II (1969) **(4.5 marks)** – conclusion that on the assumption that Grethen booked two separate flights and that neither airline was aware of the other contract, then the loss is not recoverable as it is unforeseeable – but that if she booked a flight from Dublin to Singapore, with a change in Belfast then the €860 is recoverable as *Bluesky Airways* had actual knowledge and the loss should have been ‘*within the reasonable contemplation of the parties*’ at the time of the contract **(1.5 marks)**

Solution to Question 9

- A. Unfair Dismissal: any dismissal based on: (1) gender, (2) marital status, (3) family status, (4) religious belief, (5) age, (6) race, (7) disability, (8) sexual orientation, (9) membership of the travelling community, (10) trade union membership, (11) pregnancy, (12) where the employee has taken legal action against the employer, (13) where the employee has been involved in lawful industrial action against the employer or (14) because an employee has exerted (or attempted to exert) their rights under protective legislation (including minimum pay) **(any 6 = 3 marks)**
- B. Fair Dismissal: (1) lack of competence/capability & qualifications: competence relates to intellectual ability to complete the work, capability relates to mental and physical ability to perform the required tasks and qualifications relate to either academic, professional, technical, occupational or other qualifications – for example, a haulage driver who loses his driving licence as a consequence of drink driving may be dismissed for lack of suitable qualifications – in Moriarty v Greenes (Falcarragh) Ltd (1983) a dismissal for gross incompetence was deemed fair; **(2 marks)** (2) employee misconduct – act of gross misconduct (such as criminal activity) may justify a summary dismissal, acts of continuous misconduct (such as absenteeism/tardiness etc) should result in a warning and ultimately dismissal if the behaviour continues, acts of isolated misconduct (not gross) should only warrant a warning and not dismissal **(2 marks)**; and (3) redundancy – where the position no longer exists (downsizing, relocation, re-structuring etc) or the company no longer exists – subject to the selection being fair **(1 mark)**

Solution 9 (Cont'd)

- C. Conclusion: Ruth's dismissal may be considered unfair as this was an isolated incident of misconduct which was not reflective of her normal performance as an employee, her employer had provided her with the alcohol, and no proper procedures were used to effect her dismissal (no prior notification of the disciplinary meeting, no representative etc) – this act may not be classified as gross misconduct and therefore the most appropriate remedy may have been a warning **(2 marks)**

Solution to Question 10

- Standard of Care: issue of whether or not the standard of required care is breached is ascertained based upon the reasonable man test – in effect would a hypothetical person of reasonable prudence, common sense & common knowledge have committed the act complained of **(1.5 marks)**
- In determining whether a reasonable man would act in a certain manner the Court reviews the following factors: (1) the probability of the accident – the higher the probability of an accident – the higher the standard of care it carries – in *Healy v Bray UDC (1962/3)* and *Bolton v Stone (1951)* the minuscule probability of an accident relieved both defendants of liability **(2 marks)** (2) the gravity of the threatened injury – the higher the gravity, the higher the standard imposed – in *Paris v Stepney Borough Council (1951)* because the gravity of the injury was high the failure of the defendant to take reasonable measures to reduce a risk breached the standard of care **(2 marks)** (3) the social utility of the defendant's actions – the motivation behind the defendant's conduct may be a factor in determining negligence, *Watt v Hertfordshire County Council (1954)* **(1.5 marks)** and (4) the cost of eliminating the risk – where the risk is low and the cost is high, failing to eliminate a risk completely may not amount to negligence – however where the risk or gravity is high – cost is not a factor – in *Donaldson v Irish Motor Racing Club (1959)* the Court held that the organisers of a motor race were not liable when one of the cars veered off the road and ploughed into the spectators as to remove spectators to such a distance or to guard them with such protective screens as would ensure complete safety would in most cases diminish the view, so as to render watching unattractive and put an end to the entertainment **(2 marks)** – none of the factors are conclusive of themselves and all relevant factors are taken into consideration by the Courts – although based on the facts it is likely that the actions of the doctor are in breach of the required standard as failure to correctly record patient information on a medical chart is something that a reasonable person would not do and is likely to result in a high probability of an injury, with potential grave consequences **(1 mark)**

Solution to Question 11

- A. An agent is a person who creates a contract on behalf of another person **(1 mark)** – classes of agent: (1) general agent – a person empowered to make contracts incidental to normal business and trade (for example, employees) **(2 marks)**, (2) special agent – a person empowered to make contracts in relation to specific subject matter (such as travel agent/estate agent/mortgage and insurance brokers etc) **(2 marks)**
- B. Agency by operation of law/ necessity arises where a contract of agency is deemed to exist in the event of extraordinary circumstances – in effect, where an emergency situation arises relating to the transportation of goods or where one person has possession of another's goods they may become an agent of necessity **(1 mark)** – for this to occur the following factors must exist: (1) the agent must be entrusted with the goods of the

Solution 11 (*Cont'd*)

principal, (2) an emergency must arise, (3) the agent must attempt to contract to the principal, and (4) the agent must be acting in good faith and in the best interest of the principal and to protect the principal's interest - in these circumstances the Court will imply that the person is acting as an agent of necessity, examples include: Great Northern Railway v Swaffield, 1874, Sachs v Miklos (1948) **(3 marks)** - conclusion that an agency of necessity exists between Alex and Maxwell (there was an emergency, Maxwell was uncontactable, Alex was acting to protect Maxwell's interest) and Alex can recover the €800 from Maxwell **(1 mark)**

1st Year Examination: August 2012

Law & Ethics (ROI)

Examiner's Report

Statistical Analysis – By Question

Question No.	1	2	3	4	5	6	7	8	9	10	11
Average Mark (%)	62%	49%	64%	46%	47%	46%	43%	42%	66%	23%	55%
Nos. Attempting	207	188	147	172	162	112	135	177	190	138	142

Statistical Analysis - Overall

Pass Rate	55%
Average Mark	49%
Range of Marks	Nos. of Students
0-39	57
40-49	37
50-59	55
60-69	34
70 and over	26
Total No. Sitting Exam	209
Total Absent	77
Total Approved Absent	10
Total No. Applied for Exam	296

The results achieved in this sitting of the exam paper were generally on par with the results from Autumn sittings in previous years. What was surprising (and was not so evident from the Summer sitting) was the huge variances in results across the centres. This may be explained, at least in part, by the small numbers' sitting in some centres.

Those students who failed to attain a pass mark are advised to remember the following points when answering the exam questions:

- A. Read the question carefully and only answer the question being asked.
- B. Avoid a discussion of irrelevant issues – this will not gain you additional marks.

- C. Always define the legal concepts, and include explanatory case law, where appropriate. If your application is not correct – you will still be awarded marks where you have explained relevant concepts.
- D. No marks will be awarded for citing legislation verbatim – where no attempt has been made to explain the application/contextual meaning of the provision.

Question 1:

Mixed standard of answers (with some excellent answers) – students lost marks as follows:

In Part A:

Some students failed to define the offence of insider trading or discuss the key definitions that encompass this offence – such as an insider, price sensitive information etc... In relation to ramifications for committing insider trading some students lost marks by discussing the sanctions that can be imposed upon a member by Accounting Technicians Ireland – rather than discussing the civil and criminal penalties prescribed by the legislation. Some students stated that there are no criminal consequences – this is wholly untrue – the offence carries a severe criminal penalty of a fine of up to €10m or up to 10 years imprisonment or both, where prosecuted upon indictment.

In Part B:

Most students were able to list THREE of the five fundamental principles of the Accounting Technicians Ireland Code of Ethics, and the majority were awarded full marks for this component. A small portion of students listed the reporting obligations imposed upon members and lost marks.

In Part C:

The majority of students could list FOUR sanctions that can be imposed by the Complaints Committee of Accounting Technicians Ireland – some lost marks where they stated that they can be imprisoned for a breach of the Code. This type of answer demonstrated a complete lack of understanding of the role of quasi-judicial tribunals, the criminal code, and those with the power to impose criminal sanctions.

Question 2:

- A. There was some confusion in relation to the distinction between partners' statutory and fiduciary duties, which resulted in a loss of marks.
- B. A large portion of students could not adequately explain the rules that apply in relation to a retiring partner, and how they can extinguish their liability for existing and future debt. Furthermore, some students kept discussing companies in this answer and discussing the rules relating to retirement as outlined in the Memorandum and Articles of Association. This demonstrated a complete lack of understanding of the distinction between partnerships and companies.

Question 3:

There were some excellent answers to this question – attaining full marks. There were also some disastrously incorrect answers – stating that ordinary shares have unlimited liability, whereas preference shares have limited liability. Students also incorrectly stated that preference shares are guaranteed a dividend – this is untrue, dividends are only generally payable when there are profits available for distribution. In addition, preference shares are NOT the first debt payable on liquidation – although they may be the first shareholder payable on liquidation.

Question 4:

- A. Most students could list at least one person ineligible to act as a company director. Incorrect answer stated that shareholders, family members of officers and persons with criminal convictions cannot act as company directors
- B. The majority of students could not adequately define a substantial property transaction or explain the procedure required to validate these transactions. This was surprising as this component has appeared on previous exam papers and will continue to appear until the standard of answers improves significantly.
- C. The majority of students knew that there was a breach, but could not explain that the breach was due to a failure of the director to obtain members approval by an ordinary resolution.

Question 5:

- A. Some students explained the concept of the ARD and understood the rules. Incorrect answers included the 31st October (date for self-assessed tax returns) and annually.
- B. Some excellent answers – but some students left this component blank.
- C. It was surprising that a large component of candidates could not list the accounting records that must be retained by a company – especially given the other modules that they study as part of this qualification.

Question 6:

Most students produced an average/good standard of answer to this question – marks were lost where students confused the concepts of examinership and receivership with members' voluntary liquidation. Wholly incorrect answers discussed the "courts" involvement in this process.

Question 7:

- A. This portion of the question produced varying answers – with some students providing excellent answers, but others discussing the criminal jurisdiction of the courts and not the civil jurisdiction, which was asked.

- B. The majority of students could not explain the jurisdiction of the Commercial Court (with a significant number confusing it with the Circuit Court). This was surprising as it was flagged on the Liaison Day as an important topic – and it was a topic that was added to the textbook in 2012

Question 8:

This question was badly answered by the majority, especially Part B.

- A. Students confused methods of contractual discharge with methods of terminating an offer, and with the various grounds upon which contractual frustration can be claimed.
- B. The majority could not explain the rule in relation to foreseeability of loss – and missed the fact that there were two separate contracts in existence, therefore the first airline company could not be responsible for her missing the second flight, unless they were aware of the second booking – as this loss did not arise naturally and was not within the contemplation of the parties.

Question 9:

This question produced some excellent answers.

- A. In this section most students could list SIX grounds that constitute an unfair dismissal. Incorrect answers included discussions in relation to fair procedures.
- B. Again in this section most students could list the grounds that constitute a fair dismissal. Incorrect answers included discussions in relation to fair procedures.
- C. There was some confusion in relation to the conclusion – the fact that the “misconduct” occurred away from the workplace is irrelevant – it was a workplace event. The fact that she was drunk was irrelevant – she was attending a workplace event and therefore her behaviour should have been appropriate. However, the lack of fair procedures in effecting her dismissal would result in this dismissal being classified as unfair.

Question 10:

This question produced the weakest answers in the exam – with students unable to explain the concept of standard of care and instead discussing the general principles of negligence. Some answers were discussed from a common sense perspective – without any legal theory.

Question 11:

Well answered by the majority.

- A. Most students could define an agent and list TWO classifications. Incorrect answers discussed the methods by which a contract of agency can be created and not classifications.
- B. Most students could list some of the grounds that result in an agency of necessity and drew the correct conclusion.

