
Law & Ethics Northern Ireland

1st Year Examination

May 2011

Paper, Solutions & Examiner's Report



NOTES TO USERS ABOUT THESE SOLUTIONS

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

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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 2011

Paper: LAW & ETHICS (NI)

Friday 20th May 2011 - 9.30 a.m. to 12.30 p.m.

INSTRUCTIONS TO CANDIDATES

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

Section A is a compulsory question and must be attempted.

Section B answer ANY FOUR of the FIVE questions.

Section C answer ANY FOUR of the FIVE questions.

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

Candidates should allocate their time carefully.

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

Question 1 begins on Page 2 overleaf.

Compulsory Question

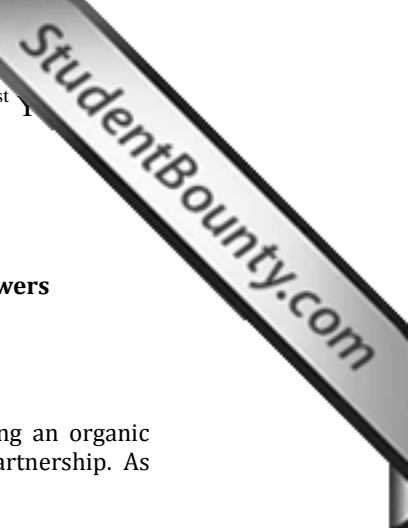
Cite any relevant authorities and/or statutory provisions to support your answers

QUESTION 1

Cameron is an accountant operating as a sole practitioner. Eight months ago a client approached Cameron asking him to arrange a mortgage for him to purchase an investment property. The client gave Cameron £250,000 in cash and asked him to arrange a mortgage for £250,000, instructing him to pay a deposit of £25,000 now and to repay a further £225,000 to the mortgage company after the mortgage had been operative for six months. Cameron acted in accordance with the client's instructions. However, the mortgage company became suspicious when they received the cash payment of £225,000 and reported the client and Cameron to the Police on suspicion of money laundering.

- a) Define the term money laundering. **2 Marks**
- b) Discuss the THREE elements of the offence of money laundering as established by the Proceeds of Crime Act 2002. **4.5 Marks**
- c) Explain the THREE processes by which money laundering can take place. **4.5 Marks**
- d) Outline the other TWO criminal offences relating to money laundering under the Proceeds of Crime Act 2002. **4 Marks**
- e) Discuss the sanctions/penalties that can be imposed where a person is found guilty of money laundering and of the other TWO criminal offences relating to money laundering. **3 Marks**
- f) Assess whether Cameron is guilty of a money laundering offence. Give reasons to support your answer. **2 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

Alex and Jack have just graduated from catering college and are considering establishing an organic restaurant in Lisburn City. They have decided that the business should take the form of a partnership. As they know nothing about partnership law they seek your advice as follows:

- a) Outline the purpose of a Deed of Partnership and list any SIX terms that should be included in a Deed of Partnership.
- b) Explain the various methods by which a contract of partnership can be terminated/dissolved.

4 Marks

6 Marks

Total 10 Marks

P.T.O. →

QUESTION 3

Compare and contrast any FIVE of the characteristics of the shareholders and the debenture holders of a company.

Total 10 Marks

QUESTION 4

Redford is a non-executive director of Canon Construction Ltd. He became a non-executive director of this company after working for over thirty years in the French construction sector. Six months ago, Redford attended a board meeting of Canon Construction Ltd despite the fact that he was suffering from the flu. Redford was taking medication for this flu and during the course of the meeting he fell asleep. He was awoken suddenly by the raised voices of two of the executive directors who were having a heated argument over whether the company should acquire a particular site for investment. The matter was immediately put to a vote and although Redford had not heard the arguments for and against the investment he voted in favour of it as the majority of directors were voting in this way. This investment has gone badly wrong and lost the company over £1 million. The shareholders are outraged at this loss and the director who was arguing against it has urged the shareholders to sue the directors for negligence. In particular, he has told them that they should sue Redford as he was asleep for almost the entire meeting at which this investment was being discussed.

- a) Define a director and explain the distinction between executive and non-executive directors.
- b) Discuss the duty imposed upon directors to exercise reasonable skill and care in the management of the company and advise Redford whether he has breached this duty in the circumstances.

5 Marks

5 Marks

Total 10 Marks

QUESTION 5

Richmond Web Design Ltd has recently been notified by their company accountant that as the turnover of the company is in excess of £5.6 million that they are no longer eligible for an audit exemption and will need to appoint an auditor. In this regard advise them as follows:

- a) Define the role of an auditor.
- b) List the THREE conditions that a person must satisfy in order to be eligible to be appointed as an auditor of a company.
- c) Explain any TWO duties owed by an auditor to the company.
- d) What must be stated in the 'statement of circumstance' submitted by the auditor before he leaves office

2 Marks

3 Marks

4 Marks

1 Mark

Total 10 Marks

QUESTION 6

Kitty Kat is Northern Ireland's most famous 'cat racing' company. In 2008 they built the well known 'Catch a Cat' arena in Coleraine at a cost of £2 million pounds in which people travelled from all over the province to watch the cats racing and enter their own pet cats into the numerous competitions. Unfortunately, the recession has had a dramatic impact on Kitty Kat's business and their revenue no longer covers the costs of running the business. The company accountant has suggested that Kitty Kat have no alternative but to go into 'Administration' and appoint an Administrator.

Answer Kitty Kat's questions in relation to this process:

- a) State FOUR powers and duties of an administrator. **2 Marks**
 - b) Explain how a company is 'protected' by the process of administration. **2 Marks**
 - c) What is the maximum period of time that a company can remain in the process of administration? **2 Marks**
 - d) State TWO methods by which an administrator may be removed from office. **2 Marks**
 - e) What are the TWO advantages of administration over liquidation? **2 Marks**
- Total 10 Marks**

SECTION C

Answer ANY FOUR of the FIVE questions in this Section

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

QUESTION 7

- a) Explain the distinction between primary legislation and delegated (secondary) legislation. **2 Marks**
 - b) Give ONE example each of primary legislation and delegated legislation. **2 Marks**
 - c) Discuss the advantages and disadvantages of delegated legislation. **4 Marks**
 - d) Discuss the unique power and role of the courts in relation to delegation legislation. **2 Marks**
- Total 10 Marks**

QUESTION 8

- a) Define the concept of consideration.

2.5 Marks

- b) Explain the distinction between executed and executory consideration, providing an example of each.

3 Marks

- c) Last year Frank witnessed an accident at his local shopping centre in which his neighbour Betty fell and broke her hip on a spillage of coffee on the floor of *Coffee Delights* coffee house. Betty sued *Coffee Delights* for her injuries and asked Frank to act as a witness for her in this claim. Frank said that although he would be delighted to act as a witness he was concerned that if he had to take time off work to do this that he would not be paid for this absence. Betty promised to pay Frank £200 expenses if he agreed to act as her witness in court. Frank agreed to this and did act as her witness when the case came to trial. However, Betty is now refusing to pay Frank as her solicitor informed her that as he had subpoenaed Frank as a witness he was legally obliged to give evidence in court. Discuss the rule that *consideration must be more than what the party already has to do* and in light of this discussion determine whether Betty's promise to pay Frank the £200 is legally enforceable.

4.5 Marks

Total 10 Marks

QUESTION 9

Valentine Publishing has been encountering a drop in sales in the last year as a consequence of the growth in popularity of electronic readers and e-books. The company is now considering making twenty of its 150 staff redundant. Of these twenty employees Valentine Publishing has selected: (1) Sheila for redundancy, as she is suing the company for injuries arising from an occupational accident, (2) Robert, as he has been called for jury service, and (3) Eleanor, as she is on maternity leave.

- a) Discuss any THREE rights of an employee upon redundancy.

3 Marks

- b) Outline the consultation requirements imposed upon companies considering collective redundancies. Comment also upon the penalties that can be imposed for non-compliance.

4 Marks

- c) List any FOUR grounds that would amount to unfair selection on the grounds of redundancy and would facilitate a claim for unfair dismissal. State whether you consider Sheila's, Robert's or Eleanor's selection for redundancy fair or unfair in the circumstances.

3 Marks

Total 10 Marks

QUESTION 10

Last week Charlie dropped his car into Romford Motor Garage for its annual service. When he collected the car he noticed a problem with the brakes. He rang Romford Motors immediately and explained the problem to them. They told him to bring the car back to the garage and that they would look at it first thing the next morning. That same day he was returning home from work and had just turned onto his road when a neighbour's child kicked a ball that hit the windscreen of his car and completely shattered the glass. Charlie immediately hit the brakes but the car did not stop and skidded into a wall. The accident resulted in Charlie incurring two broken ribs, a crushed collarbone and a concussion. At the time of the accident Charlie was not wearing his seat belt.

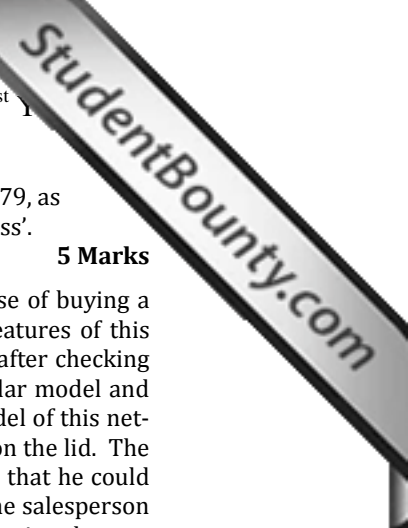
- a) Define the concept of causation and explain the tests used by the Courts to determine causation in the case of a single cause of an injury and in the case of multiple causes. Based on this explanation advise Charlie as to who he should sue for his personal injuries and the damage to his car.

6 Marks

- b) Discuss the defence of contributory negligence and examine the impact of this defence on any claim made by Charlie.

4 Marks

Total 10 Marks



- a) Define a contract for the sale of goods, pursuant to the terms of the Sale of Goods Act 1979, as amended and distinguish between 'private' sales and sales done 'in the course of business'.

5 Marks

- b) Emma, a trainee accountant, recently visited her local electronics store for the purpose of buying a new net-book. She particularly liked the XS300 model and discussed in detail the features of this model with the salesperson. She decided to purchase this model for £350. However, after checking in the stock room the salesperson told her that they were out of stock of that particular model and that they would not be getting any more in. He then offered to sell her the display model of this net-book. When she inspected the display model she noticed a number of small scratches on the lid. The salesperson explained that these scratches were caused by normal wear and tear, and that he could offer her a discount of £50 on the price. She agreed to the purchase and was told by the salesperson that there would be no refund allowed on ex-display models. Two months after purchasing the net-book it stopped working. When she took it to her local repair centre, they inspected it and informed her that the operating system had crashed and that it was not repairable. Emma seeks your advice as to whether she is entitled to a remedy under the terms of the Sale of Goods legislation based on the net-books lack of satisfactory quality. Advise Emma.

5 Marks

Total 10 Marks



1st Year Examination: May 2011

Law & Ethics (NI)

Suggested Solutions

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

Solution to Question 1

- A. 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 **(2 marks)**
- B. Elements of the offence: the offence is regulated in Northern Ireland by the Proceeds of Crime Act 2002,- according to Section 327 money laundering arises where a person: (1) conceals or disguises the nature, source, location, movement or ownership of criminal property (2) converts or transfers that property from one form into another e.g. from cash into property or (3) transfers or removes it from the State e.g. from Northern Ireland/UK into Ireland (or provides advice or assistance in relation to conversion or transfer) **(4.5 marks)**
- C. Processes: the offence can be achieved by (1) placement: this is the initial disposal of the proceeds of criminal activity into an apparently legitimate business activity or property, (2) layering: this involves the transfer of money from business to business, or place to place in order to conceal its initial source, and (3) integration: this is the culmination of the previous procedures through which the money takes on the appearance of coming from a legitimate source **(4.5 marks)**
- D. TWO separate offences relating to money laundering (1) Failure to report: it is an offence for a person employed in the regulated sector not to report someone they suspect of money laundering to the relevant authority **(2 marks)** (2) Tipping off: it is an offence to make a disclosure that is likely to prejudice a money laundering investigation for example, a solicitor tips off his client that he may be investigated for money laundering **(2 marks = total 4 marks)**
- E. Sanctions: a person guilty of a money laundering offence is liable to imprisonment for a term not exceeding 15 years and/or a fine **(1 mark)** – a person found guilty of failure to report/tipping off a suspicion of money laundering is liable to the imposition of a fine or a term of imprisonment of up to 5 years, or both **(2 marks)**
- F. Conclusion: it is likely that Cameron will be found guilty of money laundering – as he is liable for failure to report what was obviously a suspicious transaction **(2 marks)**

Solution to Question 2

- A. Partnership Agreement: contract between the partners – outlining rights, duties and obligations (**1 mark**) – generally includes the following terms: (1) the nature of the firm’s business, the name of the firm and its principal place of business, (2) the capital and property of the firm and the proportion in which it is contributed by each partner, (3) the date of commencement and the intended duration of the partnership, (4) provision for the payment of salaries, if any, to the partners, (5) rights, obligations and duties of each individual partner i.e. the legal relationship between the different partners, (6) provision for audits and accounts, partner drawings, partnership meetings, (7) division of profits and losses, (8) the procedure to be adopted on the death, retirement or bankruptcy of a partner, (9) the procedure for the valuation of the goodwill and assets on the sale of the partnership or on the death of a partner, (10) provision for the dissolution of the partnership, (11) provision for the admission of an additional partner or the expulsion of an existing partner, (12) an arbitration clause setting down the procedure to be used in solving disputes (**any 6 x 0.5 marks = 3 marks**)
- B. Termination of a Partnership: this may arise in the following ways: (1) by operation of the law (Section 32-34 of the 1890 Act): (a) the passage of time, (b) attainment of objectives, (c) by retirement/notice of a partner, (d) by the death or bankruptcy of a partner, (e) by an intervening illegality that makes the continued existence of the firm illegal, (**2.5 marks**) (2) by an Order of the Court (Section 35 of the 1890 Act) – this may be granted due to the (a) permanent mental or physical incapacitation of a partner, (b) partner misconduct, (c) persistent breach of the partnership agreement, (d) where the partnership can only be carried on at a loss, or (e) where the Court considers at its absolute discretion that dissolution it “just and equitable” in the circumstances, (**2.5 marks**) and (3) by agreement – where the partners can unanimously agree to dissolve the partnership, even prior to any fixed date stated in a partnership agreement (**1 mark**)

Solution to Question 3

- Shareholders and the Debenture Holders: (1) role – shareholder is a member and creditor of a company, the debenture holder is a creditor of a company, (2) rights – shareholders as members have rights in relation to the company whereas debenture holders as creditors have rights against the company, (3) participation – shareholders are involved in the company as they have the right to attend meetings, and possess voting rights that can be exercised at these meetings (depending on the nature of the shares) whereas debenture holders 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), (4) cost – shareholders cannot buy shares at a discount whereas debenture holders can purchase debentures below their nominal value i.e. at a discount, (5) capital growth – shareholders have a right to capital growth (if there is any surplus capital on liquidation) whereas debenture holders have no right to capital growth – they only have a right to repayment of the principal sum plus interest, (6) 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 whereas debenture holders have a right to repayment plus interest on the loan even if the company is making losses, and (7) risk – shareholders are the last to be paid on liquidation of a company so they carry a higher risk whereas the debenture holder’s debt is satisfied before shareholders so their financial investment is considered more secure (**any 5 x 2 marks = 10 marks**)

- A. Definition - director is defined in company law as "...any person occupying the position of director, whatever name called." Directors control and manage the day to day running of a company. They are the most powerful persons in a company and have extensive powers and duties (**1 mark**) Executive Directors – Directors who are involved in the operational management of the business – they provide continuous attention to the affairs of the business – more often an employee – example, Managing Director – usually hold important positions within the day to day running of the business (**1 marks**) – Non-Executive Directors – Directors appointed to manage the business on a transient basis – more involved in strategic management at board level, not involved in the operational running – appointed due to their expert knowledge, experience, attainment or skills – their role is to act as monitors of the executive directors (by ensuring that they are acting within their powers and the companies objectives) and to provide the board of directors with additional expertise and an objective view point (**3 marks**)
- B. Duty of Care and Skill: directors are required to exercise reasonable skill, care and diligence in the performance of their duties – (1) the directors must exercise the duty to a standard reasonably expected from a person of his knowledge and experience, (2) the director can delegate the duties of the company to the management provided it is normal business practice and there are no suspicious circumstances, although the director still has a duty to supervise the discharge of the delegated function, as per *Re Barings Plc*

(No5) (2000) – the test to determine liability is a subjective standard test and the court will examine what is reasonable for that particular director – the more qualified the director, the higher the standard will be expected from him – *Dorchester Finance Co Ltd v Stebbing (1977)* (**4 marks**) – conclusion that Redford has breached this duty – as he was brought into the company because of his expertise – and he failed to exercise this expertise when he voted in favour of this investment (**1 mark**)

Solution to Question 5

- A. Auditors Role: an auditor is an independent professional expert appointed by a company to prepare an independent report on the financial affairs of the company (audit the company), and to present this report to the shareholders at the annual general meeting (**2 marks**)
- B. Three conditions: (1) must hold the correct qualification and be a member of the recognized supervisory body (2) must not be guilty of a company law offence (3) must be independent from the company- must not be an officer or employee of the company (**3 x 1 mark = 3 marks**)
- C. Duties: (1) to provide a report to members on the company's annual accounts– this requires the auditor to report to the members on the accounts examined by them, and on every balance sheet, profit and loss account, and all group accounts laid before the company in general meetings during his/her term of office – the Auditor must state whether in his opinion the accounts reflect the company's true and fair financial position – the content of the auditor's report must be accurate, precise and unequivocal (2) not to knowingly or recklessly cause a report to include any matter that is misleading, false or deceptive (3) not to knowingly or recklessly cause a report to omit any statement that should be included in the report (4) the auditor is also obliged to act with due care and skill in the performance of his duties – this requires that the auditor does not perform his duties in a negligent manner (**any 2 x 2 marks = 4 marks**)
- D. Statement of circumstance (1) that there are no circumstances that the auditor believes that should be brought to the members or creditors attention **or** (2) that there are circumstances that the auditor believes that should be brought to the members or creditors attention (**2 x 0.5 marks = 1 mark**)

Solution to Question 6

- A. Powers and duties of an administrator: (1) power to manage the affairs business and property of the company- dispose of company property and bring legal proceedings in name of company (2) power to remove a director or appoint a new director (3) duty to apply to court for directions and duty to comply with court directions (4) duty to act in the best interests of the company **(4 x 0.5 marks = 2 marks)**
- B. Company 'Protection': when a company is protected under administration a company cannot be put into liquidation: (1) no-one can try to wind up the company (2) the company cannot put itself into voluntary liquidation (3) no legal proceedings can be brought against a company by its creditor **(any 2 x 1 mark = 2 marks)**
- C. Maximum period: a company can remain in administration for 12 months and this can extended by a further 6 months with the approval of creditors or the court **(2 marks)**
- D. Removal of an administrator: (1) when the period of administration comes to an end (2) if the administrator applies to court stating the purpose of administration has been achieved or that it cannot be achieved (3) a creditor may apply to the court to have the administrator removed (4) when the administrator is no longer qualified to hold office **(any 2 x 1 mark = 2 marks)**
- E. Advantages of liquidation: (1) the company is not wound up but given another chance to restructure and recover (2) creditors may have a better chance of having their debts repaid in full as purpose of administration is to achieve best result for creditors. **(2 marks)**

Solution to Question 7

- A. Distinction: primary legislation relates to laws enacted by Parliament/NI Assembly (Acts) – whereas delegated (secondary) legislation refers to laws passed by bodies (such as a government Minister or a public or local authority) other than Parliament/NI Assembly where the right to delegate legislation has been given to them under the terms of the primary legislation **(2 marks)**
- B. Primary legislation- take the form of Acts, for example Companies Act 2006/Proceeds of Crime Act 2002/Sale of Goods Act 1979 **(1 mark)** Delegated legislation takes the form of Orders or Regulations, for example, Insolvency Rules (NI) 1991/ Employment (NI) Order 2003 (Dispute Resolution) Regulations **(1 mark)**
- C. Advantages/Disadvantages: advantages – (1) it enables the legislation to be passed (and if necessary changed at a later date) more quickly, by avoiding the sometimes slow and cumbersome process of the Parliament/NI Assembly, and (2) its allows experts in the area of the legislation to be involved in making legislation – disadvantages: (1) it enables a large volume of complex legislation to exist in the one area of law, and (2) the lack of publicity surrounding the implementation of the delegated legislation means that the public can remain largely unaware of changes in law **(4 marks)**
- D. As delegated legislation is not approved by Parliament the courts have the power to judicially review any piece of delegated legislation and declare it invalid if the courts consider that the body who implemented the delegated legislation acted outside their powers or that the body used the incorrect method of implementation. Courts cannot challenge primary legislation as this has been approved by parliament, who is the supreme law making body. **(2 marks)**

Solution to Question 8

- A. Definition: discussion of the requirement relating to the presence of consideration in a contract to affirm its validity – consideration is based on the notion of *quid pro quo* (a favour for a favour), and on mutuality of obligation (you do something for me and I'll do something for you) – in most contracts it is the price you pay for a promise etc – to be valid the consideration must be real and genuine, it cannot be vague (idea of prayers), uncertain or illegal **(2.5 marks)**
- B. Executory/Executed consideration: executed consideration can be defined as a promise in return for an action or a thing – for example, if you give me that coffee I will give you £3 whereas executory consideration can be defined as 'a promise in return for a promise' – this means that the parties exchange promises to perform acts *in the future* – for example, a shopkeeper promises to deliver goods and customer promises to pay for them when they arrive **(3 marks)**
- C. Consideration must be more than what the party already has to do: a promise to perform an act that you are legally or contractually obliged to do anyway, will not constitute sufficient consideration for any new agreement – Collins v Godfrey (1831) – this rule relates to requests for further payment in addition to what was already agreed under a contract, Stilk v Myrick (1809) which can be contrasted with Ward v Byham (1956) – or where a mother has not provided consideration as she is legally obliged to look after her child **(3.5 marks)** – in this scenario as Frank was subpoenaed to act as a witness for Betty in his claim against *Coffee Delights* therefore Betty's promise to pay Frank the £200 is not legally enforceable **(1 mark)**

Solution to Question 9

- A. Rights of an Employee upon Redundancy: (1) right to a redundancy payments: statutory redundancy payments amount to ½ weeks wage for each year of service if under 21; one weeks pay per every year of service if aged between 22-41; one and ½ weeks wage if aged between 42 and below retirement age(2) right to statutory minimum notice: the minimum will depend on the length of service–(3) right to time off during notice period: this is to look for new employment, attend interviews or training courses – (4) right to be individually informed of the potential of redundancy and how the process of redundancy works**(3 x 1 mark = 3 marks)**
- B. Consultation Obligations: there is also a statutory obligation upon an employer who plans to undertake collective redundancies (more than 20 less than 100 persons) to consult the trade union or if there is no trade union, the elected body of employee representatives at least 30 days in advance of making the first redundancy –if making more than 100 redundancies they must consult at least 90 days in advance- the purpose of the consultation is to look at methods of reducing or avoiding the necessity for redundancies – there is also a statutory obligation for the employer to give written notice to the Department of Trade, Enterprise, and Investment **(2.5 marks)** – failure to comply is treated as a criminal offence and the employer is liable on summary conviction to a fine of up to £5000, the Court may also award a protective award (which can be up to a maximum of the wages

they would have earned had there been the required consultation period- i.e. 30 days or 90 days wages) against the employer **(1.5 marks)**

- C. Unfair Selection: grounds include selection 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 company or (12) because an employee has exerted (or attempted to exert) their rights under protective legislation (including minimum pay) **(any 4 = 2 marks)** – conclusion that if Sheila is selected on the grounds of legal action, if Robert is selected on the grounds of disability or if Eleanor is selected due to age then the selection will be viewed as unfair in the circumstances **(1 mark)**

Solution to Question 10

- A. Causation: to succeed in a negligence action the plaintiff must be able to prove that the defendant's act or omission caused the loss or damage to the plaintiff – the key test to determine causation is the "But for Test" – question asked in the negative and if the answer is in the negative, then causation is established – problems with this test where there is more than one cause of an injury – such as arose in Barrett v Chelsea & Kensington Hospital Management Committee (1969) where the cause of death was arsenic poisoning and the failure of the hospital to treat him – resulted in the development of a second test – where there is more than one cause of an injury – this is known as the material element and substantial factor test, McGhee v National Coal Board (1973) **(5 marks)** – conclusion that Charlie can sue both Romford Motor Garage and his neighbour for his injuries as they were both concurrent wrongdoers and materially contributed to Charlie's injuries **(1 mark)**
- B. Defence of Contributory Negligence: where a person contributes to their own injuries by failing to exercise reasonable care in relation to their own personal safety or the safety of their property – the Court views it as a breach of duty of care towards oneself – the defence allows for the apportionment of damages where contributory negligence arises, based on the degree of fault of the respective parties – the defence may also arise by a failure to mitigate damages, such as in Jones v Livox Quarries (1952), and in Froom v Butcher (1976) – **(3.5 marks)** – conclusion that the Court is likely to allow the defence as Charlie contributed to his injuries by not wearing a seat belt at the time of the incident **(0.5 marks)**

Solution to Question 11

- A. Sale of Goods Act 1979– a contract in which a seller transfers or agrees to transfer ownership of goods (goods being all personal chattels other than things in action or money) to a buyer for a money consideration called the price **(1 mark)** – Private sales: transactions carried out between a private individual and a consumer e.g. buying a car from a friend who is not a car dealer **(2 marks)** – sales done 'in the course of business' are sales carried out between a business and a consumer for example an individual buys a jumper from a high street shop **(2 marks)**
- B. Satisfactory Quality: Section 14 –satisfactory quality: as durable as one can expect – taking account of price, description and all other relevant circumstances (time of sale, changing standards) –courts will consider appearance of goods and any defects and how serious the defects are- assess durability of product and whether the goods have lasted in reasonable condition according to the circumstances and nature of the contract– exceptions, defects brought to the attention of the buyer before contract is made, defects obvious to a reasonable person, Grant v Australian Knitting Mills (1936) – doctrine of *caveat emptor* **(4 marks)** – conclusion that Emma can exert her rights under the legislation as the defects brought to her attention had nothing to do with the net-books operating system – and it is illegal to exclude the terms of the Act in consumer contracts – therefore Emma is entitled to a remedy **(1 mark)**

Accounting Technicians Ireland

Examiner's Report Examination: May 2011 Law & Ethics (NI)

General comments:

This year some candidates produced papers of a very high standard. It was clear that they had revised the topics in the manual and were able to apply this knowledge to the questions being asked. Many candidates who did not pass this examination did produce at least one question of a very high standard in their exam paper, and I would urge those students to take more time to revise a great number of topics as they clearly have the ability to achieve a good result. If you can answer one question to a good or very good standard, you can answer all questions to this standard.

I noticed that many candidates, like last year, had memorised past paper solutions and simply recited these answers despite the fact that their prepared answer did not answer the question set in this year's exam. Students who rely on the technique of predicting exam questions will fail, as each year new questions are set. These students have the ability to pass and do well, therefore use this ability and learn the topics from the manual and not the past papers solutions.

A significant number of candidates did not attempt all questions. Students should always try to answer the required number of questions as you will find that you can pick up a mark or two that can bring you from a fail to a pass, or a pass to a merit. However, be careful and spend time trying to write relevant answers. Marks cannot be awarded for factually correct information that does not answer the question being asked.

This year, I found some scripts very difficult to read. I would ask candidates to write clearly and with a dark coloured pen. When a question is divided into separate sections for example, (a), (b) and (c), candidates should answer each section separately showing a clear division between each section. Also, when answering questions, candidates should consider the marks awarded for each question and use this as a guideline as to the level of detail required.

Again, a number of candidates completed questions in summary style boxes. There is no difficulty with this but candidates must try to write short and detailed sentences rather than writing one word answers. This proves to the examiner that the candidate completely understands the question set.

Question 1 (Compulsory Question):

This question was generally well answered with many candidates achieving full marks. A significant number of students answered all parts of the question correctly but then in part (f) failed to consider Cameron guilty of any money laundering offence! Students must apply their knowledge of topics carefully to problem based questions as Cameron was guilty of the offence of 'failure to report'. Part (d) of this question was the most poorly answered part of this question as many students considered wrongful and

fraudulent trading as the two other related money laundering offences, however, went on to conclude in part (f) that Cameron was guilty of 'failing to report.' It is important that students double check their answers and think carefully about each answer.

Student tip: Students who revise the ethics topics in detail can achieve 20 marks in one question. Therefore, I consider the most important part of your revision to be the detailed learning of these chapters in the manual.

Question 2:

Overall, this question was one of the best answered. The majority of candidates who answered this question did well, however in part (a) many failed to outline the purpose of a deed of partnership, which meant that they lost a mark. In relation to part (b) some students failed to go into enough detail.

Student tips: When you finish a question double check that you have answered everything it had asked you to answer. Also, remember to consider the amount of marks being awarded when answering a question.

Question 3:

Many candidates incorrectly predicted that the question on a company's capital would test their knowledge of the difference between ordinary and preference shareholders. Strong candidates were able to present in detail the different characteristics of both shareholders and debenture holders and were awarded full marks. Weaker candidates were able to pick up some marks in their long and detailed but mostly irrelevant discussion on ordinary and preference shareholders.

This was one of the easiest questions in the exam paper to gain full marks and those candidates who performed well in the exam displayed a very competent level of knowledge of this topic.

Question 4:

Generally part (a) was very well answered. Unfortunately, part (b) produced some of the poorest answers in this year's exam. The majority of candidates launched into a detailed summary of all the different duties a director owes to a company. Very few candidates discussed the standard of reasonable skill and care expected from a director and even fewer referred to the relevant case law.

Student tip: Do not predict questions and learn off past paper sample solutions. Learn instead the topic on a company's capital from the manual. This will enable you to pass the question set in the exam.

Question 5:

This question was well answered by the vast majority of candidates, who displayed a solid knowledge of this topic. However, many students failed to answer part (d) correctly, and instead produced a number of very creative answers. Students were fortunate that the answer was worth only one mark, but it emphasises the importance of learning the topics from the manual in detail.

Question 6:

This question was one of the best answered questions. Most students who attempted this question were awarded full marks. I was very pleased with the standard produced and commend those students, who clearly revised this topic in detail.

Question 7:

This question was attempted by nearly all candidates but overall the standard of answers produced was quite low. This was disappointing as in previous years this question has been answered very well. In relation to part (a) many students correctly answered this part but then failed to provide examples and answer part (b) correctly. Generally part (c) was well answered but part (d) was very poorly answered. Also, many candidates must have thought they were sitting last years exam question and discussed in detail the parliamentary process of a Bill becoming an Act! It was very obvious the candidates who revised this topic from the manual as they scored very well.

Question 8:

This question was not attempted by a large number of candidates and overall the answers provided by candidates were not satisfactory. Only a minority of candidates appeared to have understood the concept of consideration. Some students answered part (a) well, but failed to answer part (b) correctly. Very strong candidates correctly answered each part and referred to the relevant case law when answering part (c).

Student tip: When revising remember to learn the relevant case law. You do not have to remember the name of the case in detail and all the facts, but reference to case law and the relevant facts will enable you to score very well.

Question 9:

This question was quite well answered. The majority of candidates answered parts (a) and (c) correctly but failed to answer part (b) correctly. Stronger candidates identified that part (b) was asking you to discuss the duty to consult and that your answer should have contained the different time periods required and the penalties imposed on employers who failed to comply.

Question 10:

This question was very poorly answered by the majority of candidates. The majority of candidates did not identify that this question related to causation and therefore failed to identify the relevant law and refer to relevant case law. Many students provided answers that spanned over two pages, yet did not answer the question set. Very strong candidates did refer to the 'but for' test and some case law but not in the depth required to gain full marks. Generally, candidates who attempted this question discussed the 'duty of care' owed and the associated tests. Part (b) was better answered and strong candidates identified relevant case law and were able to gain full marks in this part.

Student tip: Tort can be a difficult topic but spend some extra time learning it as the questions are designed to allow a student to gain full marks.

Question 11:

The answers to part (a) were generally very poor. Strong candidates were able to distinguish between private and business sales, but the majority of students failed to gain any marks. Unfortunately, students had predicted that the question would ask them to discuss the implied terms under the SGA 1979. Students who provided detailed answers in this respect did not gain any marks. Students were able to gain one or two marks in part (b) by correctly concluding that Emma was entitled to remedy under the SGA 1979.