



2nd Year Examination Summer 2009

LAW & ETHICS (NI)

**PAPER, SOLUTIONS
and
EXAMINER'S REPORT**

NOTES TO USERS ABOUT THESE SOLUTIONS

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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.

The solutions are relevant to the tax rates in the year the Examination was sat. A copy of the tax rates is enclosed with the solutions.

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2nd Year Examination : Summer 2009

PAPER : LAW & ETHICS (NI)

Friday 22nd May 2009 - 9.30 a.m. to 12.30 p.m.

INSTRUCTIONS TO CANDIDATES

Candidates must indicate clearly whether they are answering the paper in accordance with the law and practice of Northern Ireland or the Republic of Ireland.

In this examination paper the £ symbol may be understood and used by candidates in Northern Ireland to indicate the UK pound sterling and the € symbol may be understood by candidates in the Republic of Ireland to indicate the Euro.

Candidates may refer to the under-mentioned items of legislation in answering this paper.

Northern Ireland

Partnership Act, 1890
Limited Partnerships Act, 1907
Companies (N. Ireland) Order, 1986
Business Names (N. Ireland) Order, 1986
Companies (Table A to F) Regulations (N. Ireland), 1986
Insolvency (N. Ireland) Order, 1989
Companies (N. Ireland) Order, 1989
Companies (N. Ireland) Order, 1990
Companies (No. 2) (N. Ireland) Order, 1990
The Companies Act 2006

The above items of legislation, and only those items, may be brought into the examination by candidates and used as reference material therein. Reference items must not contain any written notes or commentaries. Candidates will not be permitted to refer to any index published separately from the legislation.

Section A answer QUESTION 1 (COMPULSORY) and ANY THREE of the FOUR remaining questions. Section B answer ANY FOUR of the FIVE questions. If more than the required questions are answered in Section A and Section B, then only the correct number of questions, in the order filed, will be corrected.

Candidates should allocate their time carefully.

Marks will be awarded for specific reference to sections of the Acts/Orders and decided cases. However, candidates are expected to answer the questions in their own words in order to demonstrate their understanding of the points at issue. The mere transcription of sections of the Acts/Orders, or the citing of references therein, by itself, will not be regarded by the Examiner as a sufficient answer.

Answers should be illustrated with examples, where appropriate. Cite any relevant authorities and/or statutory provisions to support your answers.

Question 1 begins next page.

SECTION A

Answer Questions 1 (Compulsory) and ANY THREE of the four remaining questions

QUESTION 1 (*Compulsory Question*)

- (a) Wendy and Phillip have operated a catering partnership for the past five years, and have recently been awarded a very lucrative contract with the Department of Education to provide ready-made meals for in excess of 7,000 students across 120 schools in Northern Ireland. One of the conditions of the contract is that Wendy and Peter establish a limited company. Wendy and Peter are considering naming the company *Department of Education Ready Meals*. Advise Wendy and Phillip on the limitations imposed upon the choice of company name under relevant legislation and determine whether the name *Department of Education Ready Meals* is capable of registration.
- 5 Marks**
- (b) If Wendy and Philip change the name to '*McDonalds Ready Meals*' in what circumstances, if any, could Mr McDonald object to the registration of this name?
- 1.5 Marks**
- (c) Wendy and Phillip's solicitor has advised them that to form the company they must register a Memorandum of Association, and various other documents. Outline to Wendy and Phillip the content of the Memorandum of Association and state what other documents must be filed.

6 Marks
Total 12.5 Marks

QUESTION 2

- (a) Define a Liquidator.
- 2 Marks**
- (b) Outline any *SIX* duties of a company Liquidator.
- 6 Marks**
- (c) List any *THREE* grounds upon which the Court can order the compulsory liquidation of a company.

4.5 Marks
Total 12.5 Marks

QUESTION 3

Max and Patrick are the two executive directors of Phoenix Plc. In the last year Max has experienced some serious personal financial problems arising from the ill-health of his wife, and as a consequence he has borrowed £180,000 from Phoenix Plc to finance some of her medical treatment in America. When the members of Phoenix Plc become aware of this loan they want to remove Max for breach of his statutory duties.

Discuss the statutory duty imposed upon company directors regarding loans by virtue of the Companies Act 2006. Your answer should state:

- (a) The basic rule, the permissible exceptions to the rule, and the definition of connected persons.
- 8 Marks**
- (b) The consequences for non-compliance and the procedure Max and the Board of Directors should follow to ensure the legality of the loan.
- 3 Marks**
- (c) Specify any duties owed to the company by Max and/or the Board of Directors.

1.5 Marks
Total 12.5 Marks

QUESTION 4

Discuss each of the following:

- (a) The content of the Annual Return. 5 Marks
 - (b) When is the company's Annual Return Date (ARD)? 2 Marks
 - (c) When must the Annual Return be filed and what are the consequences for failure to file? 2 Marks
 - (d) The obligations imposed regarding the annual accounts. 3.5 Marks
- 12.5 Marks

QUESTION 5

Zara is a shareholder in Adelphi Enterprises Limited. She has recently received notice of a general meeting at which the directors propose to issue 500,000 £1 ordinary shares at £2. The directors state that they plan to allocate £500,000 to the capital account and the other £500,000 to the share premium account.

- (a) Discuss the function of the share premium account and explain the purposes for which monies in this account can be utilised. 4 marks
 - (b) Define the terms "capital" and "issued share capital" and explain the distinction between called up share capital and paid up share capital. 4 marks
 - (c) Outline the DIFFERENCES between ordinary shares and preference shares. 4.5 marks
- Total 12.5 Marks

SECTION B

Answer ANY FOUR of the FIVE questions in this Section

QUESTION 6

In the context of European law discuss the main differences between European Regulations and European Directives.

Total 12.5 Marks

QUESTION 7

Rhonda is an avid collector of antique jewellery, especially pieces originating from the 1920's era. Recently, she walked past an antiques shop and saw a diamond 1920's brooch on display in the window, which had a price tag of £500. However, when she went into the shop to buy it the shop assistant refused to sell it to her for £500 and informed her that it was incorrectly priced and that the price was in fact £1,500. Rhonda refused to pay the £1,500 and left the shop really annoyed. She believes that the shop assistant should have sold her the brooch at the display price of £500.

The following week Rhonda saw an advertisement for an estate sale in her local newspaper. The advertisement stated that the estate had a number of jewellery items for sale, but that the most valuable piece was an antique bracelet that Prince Edward had given Wallace Simpson after he abdicated the English throne. The advertisement went on to say that the bracelet would be sold to the first person at the estate sale on the following Sunday morning who gave the estate manager £25,000 cash for the bracelet. As Rhonda wished to purchase the bracelet she queued for two days outside the gates of the estate. On the Sunday morning of the sale Rhonda was the first person who entered the estate and she instantly offered the estate manager £25,000 in cash for the bracelet. However, the estate manager informed her that he would not sell her the bracelet, as he had received an offer of £30,000 from another collector. Rhonda is outraged as she believes that the estate manager is obliged to sell her the bracelet for £25,000.

- (a) Discuss the distinction between an offer and an invitation to treat, with reference to appropriate case law. Based on this discussion determine whether the shop assistant was obliged to sell the brooch to Rhonda for £500 and whether the estate manager was obliged to sell the bracelet to her for the £25,000 cash.
- (b) List any FOUR methods by which an offer can be terminated.

2 Marks

Total 12.5 Marks

QUESTION 8

Mango Construction Ltd has recently experienced a significant drop in its business and as a consequence of this decline the company has decided that it will need to dismiss 25 of its 100 employees within the next six months. In this regard, advise the company in relation to the following matters:

- (a) The legal definition of redundancy. 2 Marks
- (b) The eligibility requirements to receive redundancy. 2 Marks
- (c) The possible selection criteria of employees for redundancy and what criteria would be deemed unfair. 5 Marks
- (d) The amount of compensation payable.

3.5 Marks

Total 12.5 Marks

QUESTION 9

George is employed as a production worker in a chemical manufacturing company. Last week there was an accident at the plant and a container of non-toxic chemicals was spilled onto the production floor. The company immediately notified all employees of the spillage over its intercom system and advised them to take extra care when passing through the area while the spillage was being cleaned up. George did not hear the warning as he was listening to his MP3 player while working, which is in breach of his employer's work rules. As he was passing through the area he slipped on some of the oil and injured his back. At the time of the accident George had been wearing his own shoes and not the required anti-slip rubber sole shoes that had been provided to him as part of his work uniform. George plans on suing his employer for his injuries.

- (a) Explain to George the main tests used by the Court to determine whether a duty of care exists between him and his employer in the context of the law of negligence.

6.5 Marks

- (b) The chemical manufacturing company has admitted liability in respect of the chemical spillage but is claiming a defence of contributory negligence in relation to George's injuries. Discuss the defence of contributory negligence and assess the likelihood of George's claim being reduced based on his own contributory negligence.

6 Marks

Total 12.5 Marks

QUESTION 10

- (a) Freddie has recently been appointed as the compulsory liquidator of Gatsby Garages Ltd. In the course of the liquidation Freddie discovers that one of the directors of the company removed substantial assets from the company and transferred them to a variety of different companies in which he and his wife were the sole shareholders. Freddie also discovered that the same company director also submitted a false version of the company accounts to the Bank six months prior to the liquidation in order to obtain a £50,000 loan. This money was never invested in the company and it appears to Freddie that the director used this money to buy his wife a luxury car. Freddie believes that this director is liable for fraudulent trading.

Discuss the offence of fraudulent trading, citing specific examples. Your answer should also comment on the penalties (both civil and criminal) where a company officer engages in fraudulent trading and determine whether the director's alleged actions amount to fraudulent trading.

9 Marks

- (b) Define 'wrongful trading' and comment on the possible criminal and/or civil penalties.

3.5 Marks

Total 12.5 Marks



2nd Year Examination : Summer 2009

LAW & ETHICS (NI)

SOLUTIONS

Solution to Compulsory Question 1

(a) Company Names: All company names must be registered under the Companies Act 2006 (Part 5) names and will not be registered if:

- (1) names suggesting a connection with any government department, local or public authority unless prior approval has been sought and granted by the relevant government department,
- (2) similar to another name on the Registrar's index,
- (3) All names that end with anything other than 'plc' for public companies or 'limited' for private - "*Department of Education Ready Meals*" - likely to be refused registration on the grounds that:

- (1) it includes a reference to a government authority (the Department of Education) unless permission granted, and
- (2) the word "limited" is omitted from the name.

Students may have answered this question in relation to Company (NI) Order 1986 s.36 and The Business Names (NI) order 1986 s.

(4) Answers may also include

- (1) names suggesting connection with government Dept or district council without approval
- (2) must not include phrase 'investment company with variable capital.'

(b) A person may object to the registration of this company name as the name is the same as the name associated with the applicant or his good will or is sufficiently similar to a name in use in the UK which would indicate an association between the person and the company to be registered. (s.69 CA2006). Mr McDonald may object to the registration of this name as it indicates a connection between the well known chain McDonalds and will be refused registration.

- (c) Under the CA 2006 (in effect from Sept 2009): The Memorandum of Association states that the subscribers wish to form a company and they agree to become members of it.

If the company has share capital each member agrees to subscribe for at least one share. - other documents:

- (1) Articles of Association - only required if the company does not adopt model articles,
- (2) Statement of proposed officers - directors and any company secretary if there is one,
- (3) Statement of compliance - which states that the requirements of Companies Act registration have been complied with.

Students may answer this question with reference to the C(NI)O 1986 and the registration procedure: Memorandum of Association states:

- (1) *name clause*
- (2) *objects clause*
- (3) *liability clause*
- (4) *capital clause*
- (5) *association/subscription clause - Other other documents:*
 - (a) *Articles of Association*
 - (b) *Form 21,*
 - (c) *Form 23*

Solution to Question 2

- (a) **Liquidator:** This is a person appointed by the members, creditors or the Court to effect the dissolution of the company - dissolution requires the liquidator to sell the assets of the company, pay the debts of the company, compromise any outstanding claims and strike the company off the register.
- (b) **Duties of a Liquidator under The Insolvency (NI) Order 186 Part 1 Schedule 2:**
- (1) to bring or defend an action in the company's name,
 - (2) pay any class of creditors in full,
 - (3) carry on the company's business to enable it to be wound up beneficially,
 - (4) make any arrangements or compromises with creditors, contributories, debtors etc
 - (5) he can sell/mortgage the company's property,
 - (6) to draw, accept and endorse bills of exchange in the company's name,
 - (7) to execute all necessary documents on the company's behalf, including bills of exchange, promissory notes or mortgages on the company's assets,
 - (8) to raise money on the security of assets,
 - (9) to appoint agents to do such work that the liquidator himself is unable to do,
 - (10) to prove in the bankruptcy or insolvency and do all such things necessary to wind up the company,
 - (11) power to do all things necessary for winding up the company's affairs and distributing the assets,
 - (12) in a voluntary winding up he must call a meeting of members within three months of commencement of and when liquidation complete lay accounts before the company and after final meeting he must send a copy of the accounts to the Registry, and
 - (13) following liquidation he must notify the Registrar to strike the company off the Register.
- (c) **Grounds for Compulsory Liquidation (The Insolvency (NI) Order 1989 s.123):**
- (1) the company has passed a resolution to liquidate,
 - (2) the company is unable to pay its debts,
 - (3) the company has failed to commence trading within 12 months of formation or has failed to trade in the last 12 months,
 - (4) the number of members has reduced to below 2, and
 - (5) the court considers it "just and equitable" to liquidate the business, or
 - (6) a company is registered as a public company but has failed to be issued with a certificate of incorporation within 12 months.

Solution to Question 3

- (a) **Loans to Directors:** Sections 197-214 CA 2006 - all companies will be able to make loans to their own directors or directors of their holding company with shareholder approval - thus the basic rule is that any loan to a director requires member's consent - however there are some exceptions to requiring members approval including:
- (1) loans, quasi- loans, guarantees, security to meet expenditure on company business,
 - (2) money lent to a director to fund legal proceedings in relation to any action by him in relation to the company,
 - (3) small loans under £10k to a director or connected person,
- A connected person includes: a civil partner, a person whom the director lives with "as partner in an enduring family relationship," the director's parents, children or step children over 18 or children and step children of the director's unmarried partner if they live with the director and are under 18.
- (b) There are only civil consequences for this breach, for example the transaction may be considered void. There are no criminal penalties. To ensure the legality of the loan Max should have ensured that:
- (1) it was exempt from members approval or
 - (2) that approval was sought from the shareholders and a
 - (3) resolution was passed by the shareholders, approving the loan.
- (c) It is generally thought that directors should not take loans from the company as there is a "conflict of interests" between his self interest and his duty owed to the company, but if a loan is provided, the board and director should consider their duties - such loans should only be given if they "promote the success of the company" s.172 CA2006.

Solution to Question 4

- (a) General information included in the annual return:
- (1) the address of the registered office of the company,
 - (2) the address (if different) where the register of members is kept,
 - (3) type of company and its principal business activities,
 - (4) particulars of members of the company,
 - (5) particulars of those who have ceased to be members,
 - (6) the particulars of directors and secretary,
 - (7) if the company has shares information of the share capital, and
 - (8) details of the shareholders.
- (b) The ARD is either the anniversary of the company's incorporation or if the company's previous return was made on a different date to that, the anniversary of that date.
- (c) The annual return must be delivered to the Registrar within 28 days of the return date. Failure means that the company is guilty of an offence and liable to a fine.
- (d) A registered company must prepare annual accounts showing a true and fair view. They must put these before the members with the directors' and auditors' reports attached. Following the directors approval the accounts must be filed with the Registrar each year.

Solution to Question 5

- (a) Share Premium Account: When a company issues shares above their par nominal value (at a premium) the excess in value must be lodged into the share premium account - under Section 610 CA 2006 the account can only be utilised as follows:
- (1) paying up fully paid bonus shares,
 - (2) to write off the expenses of the issue of those shares, or
 - (3) to write off the commission paid on the issue of those.

[This question may have been answered using s.40 Company (NI) Order 1986 as the above mentioned section of the CA does not come into effect until September 2009. Therefore, candidates may also have included the writing off of preliminary expenses.]

- (b) Capital: this is the money raised through the issue of shares (share capital) or debentures (loan capital) by the company - and is used to run the company.

Issued share capital - this is the total amount of capital issued by the company to date (stated in the annual return) The Called up share capital is the amount which the company has required shareholders to pay now or in the future on the shares issued.

The Paid up share capital is the amount which shareholders have actually paid on the shares issued.

- (c) Ordinary shareholders most risky - in liquidation they are last to be paid - dividend paid is dependant upon company performance - possibility of capital growth on liquidation: right to share of company assets on winding up - residuary class: their rights remain after the rights of other classes, so in good years they take the majority of profit - use voting rights to influence company policy - whereas preference shares are - less risky - they offer preference over ordinary shareholders in respect of either dividends, repayment or capital - no capital gain on liquidation only entitled to repayment of original investment - usually preference shareholders do not exercise their right to vote (maybe on issues that affects them as a class e.g.- for example, altering the rights of preference shareholders).

Solution to Question 6

EU laws can be enacted in two distinct forms, namely: EU Regulations and EU Directives.

Regulation - this is a piece of EU legislation that is binding in its entirety, and directly applicable on all the member states - the Regulation sets down a date for its implementation in the member states - and the member states need take no further legislative action - they are published in the Official Journal of the EU, and they enter into force on the date specified therein - it is not feasible for all EU laws to be enacted by means of a Regulation - as the social, economic, cultural, legal infrastructure etc of the member states are different, therefore in some instances enactment of a Directive is more appropriate.

Directive - this is a guideline/instruction to member states as to how they should standardise legislation in a particular area (given a particular timeframe in which to achieve this standardisation) - it is binding as to the result to be achieved - and is not directly applicable - the Directive gives the individual member states the choice as to the form and method of implementation - in Northern Ireland Directives become part of UK law through either an act of the Parliament (where it involves a substantive issue) or a statutory instrument (where it involves more of a technical issue) - the idea embodied in the Directive is enacted as legislation - but the exact particulars are at the discretion of the member states - examples include the Data Protection Act 1998, and the National Minimum Wage Act 1998.

Solution to Question 7

- (a) **Offer and Invitation to Treat:** an offer is "*a clear and unambiguous statement of the terms and conditions under which the parties are willing to contract*" whereas an invitation to treat is merely an invitation (inducement) to make an offer - the distinction is important as the response to an offer may be acceptance or rejection whereas the response to an invitation to treat may be an offer - the distinction between an offer and invitation to treat is often made with reference to displays, quotations, brochures and catalogues etc. - which are generally deemed invitations to treat and not offers - in terms of advertisements most are classified as invitations to treat and not offers - however, in certain situations where a reasonable person would assume that the advertisement intended to make an order - the Court may classify the advertisement as an offer - in *Carlill v Carbolic Smoke Ball Company (1893)* the Court deemed an advertisement an offer as it was worded in such a way, and accompanied by an action that indicated intention, to qualify it as an offer - in the cases of *Pharmaceutical Society of Great Britain v Boots Cash Chemist* and *Fisher v Bell* the court rules that an item in a shop with a price tag on it did not indicate an offer but an invitation to treat - conclusion that the display of the brooch with the price tag attached was only an invitation to treat - an inducement to offer to buy - therefore the shop-keeper has no obligation to sell it for £500 - however, the advertisement of the bracelet for £25,000 is likely to be viewed as a unilateral offer - accepted by performance by Rhonda - based on cases such as *Carlill* - therefore a valid contract exists and the estate manager is obliged to sell the bracelet to Rhonda for £25,000.
- (b) **Termination of an Offer:**
- (1) by rejection,
 - (2) by revocation/withdrawal (at any time before it is accepted),
 - (3) by lapse of time,
 - (4) by counter-offer, and
 - (5) by legal factors (such as death, bankruptcy, insanity/lunacy, incapacity and frustration).

Solution to Question 8

- (a) **Redundancy:** Definition of Redundancy: Section 174 of the Employment Rights (Northern Ireland) Order 1996 (ER(NI)O'96) defines redundancy as being a dismissal attributable wholly or mainly to:
- (1) the fact that the employer has ceased, or intends to cease, to carry on the business for the purposes of which the employee was employed by him or has ceased, or intends to cease, to carry on that business in the place where the employee was so employed, or
 - (2) the fact that the requirements of that business for employees to carry out work of a particular kind, or for employees to carry out work of a particular kind in the place where they were so employed have ceased or diminished or are expected to cease or diminish.
- (b) **Eligibility Requirements:** must be made redundant and have had a contract of service for at least 2 years
- there is no upper or lower age limits that apply if a person is being made redundant after 1st October 2006
- as this is incompatible with age discrimination law.
- (c) **Selection Criteria:** employer must utilise an independent selection criteria, such as:
- (a) last in first out,
 - (b) skills required,
 - (c) productivity/performance,
 - (d) attendance/disciplinary records - it would be deemed unfair selection if the redundancy decision was based on discriminatory factors such as:
 - (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 or
 - (12) because an employee has exerted (or attempted to exert) their rights under protective legislation.
- (d) **Payments:** statutory redundancy payments are calculated with reference to the age of the employee and the length of service (up to a maximum of 20 years) as follows: where the employee is:
- Aged below 21: half a week's pay per year of service; between
22 - 40: One one week's pay per year of service;
41 - 64 and above: One and a half weeks' pay per year of service - .
- Although an employer may provide a higher redundancy payment as a voluntary measure.

Solution to Question 9

- (a) **Duty of Care:** the original test based on the decision of Lord Atkin in (*Donoghue v Stevenson (1932)*), known as the "neighbour principle" - in effect you are liable for your negligent acts to your neighbour - 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 - expansion of the doctrine in recent years - now three-tier test:
- (1) was the harm reasonably foreseeable,
 - (2) was there a relationship of proximity between the parties, and
 - (3) considering the circumstances, is it fair, just and reasonable to impose a duty of care *Caparo Industries v Dickman [1990]* - conclusion that a duty of care exists between George and his employer.
- (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 is governed by the Law Reform (Miscellaneous Provisions) Act (NI) 1948 which allows for the apportionment of damages where contributory negligence arises, based on the degree of fault of the respective parties - defence arise for failure to mitigate damages - *Sayers v Harlow UDC [1958]* the claimant was injured exiting a toilet with a faulty lock - the Court held that the claimant had contributed to her injuries by the method used to exit the public toilet - in *Badger v Ministry of Defence [2005]* the claimant's reward was reduced by 20% for asbestos poisoning as he was also a smoker - in *Froom v Butcher [1976]* the failure to wear a seatbelt amounted to contributory negligence - conclusion that the Court is likely to allow the defence as George showed a lack of care for his own safety by wearing non-regulation shoes and listening to his MP3 player while working and his claim for injuries may be reduced substantially.

Solution to Question 10

- (a) **Fraudulent Trading:** definition under The Insolvency (NI) Order 1989 S. 177 - elements of the offence: where a company officer "knowingly" and "intentionally" was a party to the fraudulent carrying on of the company's business, with the intent to defraud its creditors or creditors of any other person - examples:
- a) accepting advance payment for goods from one creditor when you know there is no possibility of delivering those goods *Re Gerald Cooper Chemical Ltd (1978)*,
 - b) transfer of the company's assets to other individuals and companies that the director had an interest in and applying the proceeds for his own and his family's use - as in *Carmen v The Cronos Group SA [2005]*,
 - c) transactions to conceal company debts or that company is insolvent - as in *Morris v Bank of India [2005]* - criminal sanctions under Part 29 CA 2006 (on summary conviction imprisonment not exceeding 6 months &/or a fine - on conviction on indictment imprisonment not exceeding 10 years &/or a fine) - civil sanctions under I(NI)O 1989 (personal liability for the debts of the business arising from the fraudulent act) - conclusion that the director is liable for fraudulent trading if Freddie's allegations/suspicious are correct.
- (b) **Wrongful trading** occurs when the directors of a company decide to keep a company in business when they know or should know that there is no reasonable prospect of the company avoiding insolvency or that the directors know that the company will go into insolvent liquidation but do not do enough to minimise the potential loss to the creditors. A director will be deemed to know if that would have been the conclusion of a reasonably diligent person with general knowledge, skill and experience. (s.178 I(NI)O 1989). Civil sanctions - directors may be liable to pay some of the debt arising from their actions - there are no criminal sanctions.



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2nd Year Examination : Summer 2009

LAW & ETHICS (NI)

EXAMINERS REPORT

Observations on standard

The level of understanding demonstrated by 2nd year candidates was noticeably higher than that shown by their first year colleagues. Many papers were well answered, and contained some excellent answers.

Question I (Compulsory)

This question was very well answered with many candidates gaining full marks.

Question 2

Candidates demonstrated a good knowledge of the role and duties of a liquidator, and gained good marks in answers to this question.

Question 3

The majority of candidates who chose to answer this question appeared to find it difficult. In response to part (a) most answers stated correctly that loans to directors require members' consent, but then either (in the large part) failed to outline the permissible exceptions to the rule or did so incorrectly. Candidates were not familiar with the concept of a "connected person" and few accurate definitions were given. Part (b) was by contrast answered quite well, and nearly all candidates gained full marks for part (c). Unfortunately for many candidates however 8 out of the question's 12.5 marks were allotted to part (a).

Question 4

Candidates demonstrated a good working knowledge of the content of the annual return and the attendant filing obligations.

Question 5

In answer to part (a) the vast majority of candidates stated the function of the share premium account, but far fewer candidates understood the uses towards which these monies could be put. Answers to part (b) were generally fine. Part (c) however provoked some very good answers with most candidates clearly understanding the differences between ordinary shares and preference shares.

Question 6

Answers to this question were mixed. A number of candidates in emphasizing the flexibility of directives miss the point that directives are binding as to the result to be achieved, Notwithstanding this criticism a pleasing number of candidates understood and gave good explanations of the fact that the cultural and economic differences between the Member States mean that it is not feasible to enact all EU laws by means of Regulation

Question 7

The vast majority of candidates understood the difference between an offer and an invitation to treat. 'Follow on' marks were given if candidates incorrectly labeled the display in the window as an offer or labeled the advert an invitation to treat, but understood the nature of an offer and an invitation to treat. A repeated error in terminology across several papers was referring to an invitation to treat as an "invitation to offer", Nearly all candidates referred to *Carlill v Carbolic Smoke Ball Company* and many candidates referred to other relevant case law as well. There were some truly excellent answers, which went so far as to show flair and legal acumen in applying the case law to the problem and answering accordingly.

Question 8

This question was answered to a very high standard consistently, with the majority of candidates gaining full marks to parts (c) and (d) with notable ease,

Question 9

The answer to part (a) was very disappointing. The majority of answers addressed the question of whether a duty of care had been breached, not realizing that the question had asked whether a duty of care exists. Part (b) was however well answered.

Question 10

Relatively few candidates chose to answer this question and those who did appeared to find it difficult demonstrating little or no understanding of the meaning of 'wrongful trading' in response to part (b).

