

Tolley[®] Exam Training

ATT PAPER 3

BUSINESS COMPLIANCE

LAW AND ETHICS QUESTIONS

5th Edition text books

November 2020 Sitting

**LQ863
ATT**

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Tax intelligence
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LAW AND ETHICS

The ATT Paper 3 syllabus includes Law and Ethics and these topics can be tested either as part of a long question or as a short form question.

The required depth of knowledge is “Principles”, i.e. you will be expected to have an awareness that a principle exists and its main thrust.

In this Question Bank we have provided some short questions for Law and Ethics for you to attempt as part of your preparation for your examinations.

Law:

The chapters from the ATT/CIOT Law text book “Essential Law for Tax Practitioners” (5th edition) that are included in the Paper 3 syllabus are:

- Chapter 7 Criminal Law and Tort
- Chapter 12 Employment and Other Working Relationships
- Chapter 18 Company Law: The Basics
- Chapter 19 Company Law: Share and Loan Capital

Ethics:

The chapters from the ATT/CIOT Ethics text book “Professional Responsibilities and Ethics for Tax Practitioners” (5th edition) that are included in the Paper 1-6 syllabuses are:

PRPG (2018)

- Chapter 4 New clients and engagement letters
- Chapter 5 Client service
- Chapter 6 Objectivity (including conflicts of interest)
- Chapter 7 Other client handling issues
- Chapter 8 Charging for services
- Chapter 9 Complaints
- Chapter 10 Ceasing to act

PCRT (2019)

- Chapter 19 The fundamental principles
- Chapter 20 The standards for tax planning
- Chapter 21 Help sheet A: Submission of tax information and 'tax filings'
- Chapter 22 Help sheet B: Tax advice
- Chapter 23 Help sheet C: Dealing with errors
- Chapter 24 Help sheet D: Request for data by HMRC
- Chapter 25 Help sheet E: Members' personal tax affairs

LAW QUESTIONS

1. The share capital of a company is divided into shares, which are units defining the shareholders' proportionate interests in the company.

Give three advantages of being a shareholder.

2. The directors of a company owe certain statutory duties to the company.

Describe the statutory duties that a director owes to the company that he works for.

3. **Explain the procedure for changing the Articles of a company.**

4. **List four registers that a company must keep.**

5. A company must have a Memorandum of Association and Articles of Association.

Briefly state what these two documents are and what they contain.

6. Two of the most common types of shares are ordinary shares and preference shares.

Briefly describe the rights of an 'ordinary' share.

7. The general rule is that it is not lawful for a public company to give financial assistance to a person acquiring shares in the company.

State three exceptions to the general rule against financial assistance by public companies.

8. **Explain the company law considerations when an overseas company establishes a branch in the UK.**

9. An employee might be dismissed and claim for unfair dismissal against his employer.

What potentially fair reasons are there for dismissing an employee?

10. **Where a tax practitioner's advice causes a loss to a third party, what three things must the claimant prove in order to be successful in a claim for negligence?**

LAW ANSWERS

The references in brackets at the end of the answers are to the 5th edition of the ATT text book "Essential Law for Tax Practitioners".

1. Any *three*, for example:

- Shares confer the right to receive dividends;
- Various rights are given to shareholders by CA 2006 and by the Articles of Association, e.g. the right to receive notice of general meetings.
- Usually a shareholder has the right to vote at general meetings.

[Chapter 18.5 & 18.6]

2. A director has certain statutory duties in respect of the company for which he works as follows:

- to act within their powers
- to promote the success of the company
- to exercise independent judgement
- to exercise reasonable care, skill and diligence
- to avoid conflicts of interest
- not to accept benefits from third parties
- to declare an interest in a proposed transaction

[Chapter 18.7]

3. The Articles can be changed by holding a general meeting and passing a special resolution. The change must be bona fide for the benefit of the company as a whole.

14 days' notice will be required for the meeting and a 75% majority of the votes cast will be needed to pass the resolution.

A private company can change its Articles by written resolution. A 75% majority is required.

[Chapter 18.5 & 18.6]

4. Four registers that a company must keep:

- Register of members
- Register of charges
- Register of directors
- Register of people with significant control over a company

[Chapter 18.8]

5. The Memorandum of Association is a document signed by the initial shareholders that they wish to form the company and become members of it. It must be submitted in order to form a company.

The Articles of Association comprise detailed written rules governing the running of the company including the rights of shareholders and conduct of meetings etc. A company can submit its own articles or by default use the model articles in the Companies Act 2006.

[Chapter 18.2 & 18.5]

6. Ordinary shares usually confer one vote per share.

They are entitled to a dividend from distributable profits once any shareholder with a preferential right to dividend has been paid.

Ordinary shares confer the right to an entitlement to a distribution of assets on a winding up of the company in proportion to their nominal value of their shares.

[Chapter 19.2]

7. For example:

- 1) Lawful dividends
- 2) Employees' share schemes
- 3) Loans to employees

[Chapter 19.9]

8. An overseas company may open a branch (permanent establishment) in the UK by carrying on activities through a factory or office, for example. Where a branch is opened the overseas company must register with Companies House and provide certain particulars and returns.

Overseas companies are subject to the same rules on accounts, reports and audit as a UK company.

[Chapter 18.9]

9. Potentially fair reasons include:

- ability or qualifications
- conduct
- redundancy

[Chapter 12.9]

10. The three things are:

- 1) The tax practitioner owed them a duty of care
- 2) The tax practitioner breached the duty of care
- 3) The claimant suffered a loss as a result of the breach

[Chapter 7.13]

ETHICS QUESTIONS

1. A member must be courteous and considerate to all with whom they come into contact in the course of their professional work.

Courtesy falls within which of the five 'Fundamental Principles' relating to members?

2. The 'Standards for Tax Planning' are critical to any planning undertaken by members.

What are the five Standards and provide a brief explanation of them.

3. You have taken on a new client and wish to agree a contingent fee as the basis of payment for the work required.

State three of the guidelines in relation to using contingent fees.

4. A director of a company to which you provide tax advice has asked if you would like to invest in the company.

Outline the guidance given to members on financial involvement with a client.

5. **When should engagement letters for tax clients be reviewed?**

6. You receive a call from the bank manager of a client. He requests a copy of the client's latest income tax return in order to support an application for a loan.

According to the Professional Rules and Practice Guidelines, which of the five 'Fundamental Principles' is threatened in this situation?

7. The Professional Rules and Practice Guidelines list four examples of ways in which a member can charge for services.

List the four methods.

8. **Where a member of the ATT is to pay a commission to a third party for introducing a client, what disclosure must the member make to the client?**

9. **State four matters that you would expect to be dealt with in the covering letter accompanying a typical contract for the provision of tax services.**

10. **What are the three choices available to a member who is asked to act for both parties to a transaction?**

11. You are a tax technician working on a personal tax return for a client. Looking back to last year's return you think you have discovered an error. You are unsure of how to deal with this.

What steps should you take, according to the flowchart on 'Dealing with Errors'?

12. The profits of a trade, profession or vocation must be computed in accordance with Generally Accepted Accounting Principles (GAAP) subject to any adjustment required or authorised by law in computing profits for those purposes. This permits a trade, profession, vocation or property business to disregard non-material adjustments in computing its accounting profits.

How does the accounting concept of materiality apply when making adjustments required to accounting figures so as to arrive at taxable profits?

13. A member dealing with third parties on a client's behalf must be careful not to inadvertently assume a duty of care towards the third party.

State four ways in which the member may manage these risks.

14. A member may sign a tax return in their capacity as a liquidator.

Name three other ways in which they can sign a return.

15. The Professional Rules and Practice Guidelines state that a member should request the prospective client's permission to communicate with the client's existing adviser before accepting a new appointment.

Explain why a member should communicate with an existing adviser.

16. **Describe briefly four principles set out in the Professional Rules and Practice Guidelines that govern a member accepting a new client.**

17. **According to the Association of Taxation Technician's Professional Rules and Practice Guidelines, what procedures should be put in place to handle complaints from clients?**

18. P Ltd is engaging Dov, a member of ATT, to assist with tax compliance work. The company is offering to pay a monthly fee in return for which its finance department is likely to want between two and five days of work from Dov per month.

Identify the major areas of concern when accepting a client on a retainer arrangement.

19. You discover that due to an error by HM Revenue & Customs you have received an excessive repayment of tax, on behalf of a client.

Briefly state what action you should take.

20. **When a member delegates work to a junior, or subcontracts it, who takes responsibility for this work, according to the Professional Rules and Practice Guidelines?**

ETHICS ANSWERS

The references in brackets at the end of the answers are to the 5th edition of the text book "Professional Responsibilities & Ethics for Tax Practitioners".

You are allowed to take into the exam the Yellow 2b Tolley Handbook, which contains the PCRT from the above text book. The page numbers in brackets refer to the page in the 2019/20 version where you will find these. You can highlight these in advance of going into the exam.

1. Professional behaviour.

[Chapter 19 section 19.6 para 2.22]
[Page 2,085 of Yellow 2b]

2. The five standards are:

- Client Specific – it must be specific to the particular client's facts and circumstances
- Lawful – Members must act lawfully and with integrity at all times and expect the same from their clients
- Disclosure and transparency – All relevant facts must be disclosed to HMRC
- Tax planning arrangements – Members must not promote tax planning that is set out to achieve results contrary to the intention of Parliament
- Professional judgement and appropriate documentation – members must exercise professional judgement on a number of matters and keep timely notes

[Chapter 22 section 22.2 point 1]
[Page 2,087 of Yellow 2b]

3. Any three from Chapter 8, section 8.2, for example:

- Contingent fees can carry increased risks, such as a third party questioning the independence and objectivity of the member. Accordingly, where a contingent fee basis is adopted, a member should take care not only to ensure that their conduct meets, but is seen to meet, the required principles of integrity and objectivity.
- A member should be aware that there may be legal or regulatory restrictions to having a contingent fee.
- It is advisable that where contingent fees are used the engagement letter should set out the scope of the work they cover and stipulate the action to be taken should subsequent events cancel all or part of the benefits to the client of the contingent fee arrangement. It should set out clearly and precisely whether part or the entire fee is to be repaid and whether interest is payable.

4. Having a financial involvement with a client may be perceived as impairing a member's ability to act objectively. Members should exercise care before entering into any kind of financial arrangement with a client. This includes, for example, lending money or investing in the business of a client.

[Chapter 6 section 6.5 para 6.5.1]

5. Engagement letters should be reviewed:

- annually; and
- when the scope of services changes significantly.

[Chapter 4 section 4.10 points 1 and 3]

6. Confidentiality

[Chapter 19 section 19.5 para 2.16]
[Page 2,085 of Yellow 2b]

7. Time and expenses
Fixed fees
Contingent (including success) fees
Insurance

[Chapter 8 section 8.1 para 8.1.2]

8. If an ATT member is to pay a commission, they must disclose to the client:

- the amount and nature of the fee, commission or other reward; and
- the identity of the third party recipient.

[Other valid points will gain credit]

[Chapter 4 section 4.2 para 4.2.1]

9. Any *four* from Chapter 4 section 4.11, for example:

- (i) Who we are acting for;
- (ii) Period of engagement;
- (iii) Scope of services;
- (iv) AEOI, including FATCA

10. The three choices are:

- To advise both parties of the conflict and to give both the opportunity to consider if they wish to seek alternative representation, or agree that you continue to act for both, if appropriate
- To act for one client only – normally the one who first sought advice
- To act for neither party – if the conflict cannot be managed

[Chapter 6 section 6.4 para 6.4.2]

11. You should:
1. Establish the facts – is there an error?
 2. If there is an error – is it trivial?
 3. If it is not trivial – is specific authorisation required from the client to disclose the error to HMRC?
 4. If specific authorisation is required and the client is unwilling to give authorisation, and this is confirmed in writing, you must write to the client explaining the consequences of non-disclosure
 5. Depending on what happens at stage 4, you might be required to cease to act, and notify HMRC and your MLRO. (*Other valid points will get credit.*)

[Chapter 23 section 23.2 - flowchart]
[Page 2,099 onwards of Yellow 2b]

12. The application of GAAP does not extend beyond the accounting profits. Thus, the accounting concept of materiality cannot be applied when completing tax filings, for example, when computing adjustments required to accounting figures so as to arrive at taxable profits.

[Chapter 21 section 21.6 points 16-17]
[Page 2,090 of Yellow 2b]

13. Any four from Chapter 7 section 7.2 para 7.2.5, for example:
- Including a clear notice or caveat in the information stating that the advice has been prepared for the client and that no liability is accepted to any third parties who choose to make use of the information
 - Before consenting to the release of documents the member may request that the third party and its agents or advisers undertake that the member will be held harmless from liability as a consequence of making the advice, reports or other documents available to them.
 - Requiring the third party and/or its advisers to undertake in writing that a member be excluded from liability or held harmless as a consequence of making the information available to them.
 - Communicating to the third party the terms upon which the information is released including limitations on scope, stating that the advice was prepared only with the client's interests mind, may not apply in all circumstances, and confirmation that no responsibility is accepted.

14. Any *three* from:

- receiver
- administrator
- trustee
- executor
- attorney
- director

[Chapter 21 section 21.11 point 33]
[Page 2,091 of Yellow 2b]

15.

- a) The member is aware of any professional reason why they should not accept the appointment.
- b) The client's affairs are properly dealt with, on a timely basis, and that no filing deadlines, time limits for claims, elections, notices of appeal and other similar matters are missed in the transitional period.

[Chapter 4 section 4.4 paras 4.4.1-4.4.2]

16. Any four from Chapter 4 section 4.3 para 4.3.1, for example:

- Comply with the identification requirements set out in the anti-money laundering guidance
- Consider whether the potential client will be an acceptable client in terms of the risks which will arise for the practice from acting for that client and whether the member has the capability to manage those risks
- Consider whether the member and firm will have the skills and competence to service the client's requirements during the course of the engagement
- Consider whether there is any conflict of interest in accepting the client and if so whether and how it might be managed

17. The ATT's rules state that the procedures should ensure that:

- Each new client is informed in writing of the name and status of the person to be contacted in the event of the client wishing to complain about the services provided and of the ability to complain to the Taxation Disciplinary Board (TDB). This information should be included in the engagement letter.
- Each complaint is acknowledged promptly in writing.
- Each complaint is investigated thoroughly and without delay by a person of sufficient experience, seniority and competence who preferably was not directly involved in the act or omission giving rise to the complaint and the client is told about investigation.
- If the investigation finds that the complaint is justified, wholly or in part, any appropriate action is taken.

[Chapter 9 section 9.1 para 9.1.1]

18. One area of concern is what is covered by the arrangement. Therefore, the member should normally set out the retainer arrangement in writing so that the member and the client clearly understand the extent and limitations of the agreement and the point when further charges may be levied.

The other area for concern is that a member should watch out for conflicts of interest, given that under a retainer, the client can call on that member's services at any time, which may mean that the member may not be able to fulfil their obligations to other clients.

[Chapter 8 section 8.4 paras 8.4.2-8.4.3]

19. You should return it to HMRC as soon as practicable.

You do not need your client's authority to return an excessive repayment but should notify your client that you have done so.

[Chapter 23 section 23.5 point 21]
[Page 2,099 of Yellow 2b]

20. If a member delegates work, the member remains primarily responsible for the work so should exercise sufficient supervision to confirm that the work performed is satisfactory and that it is carried out by persons who have been suitably trained to carry out the work involved.

[Chapter 5 section 5.4 para 5.4.1]