



## INSOLVENCY PRACTITIONERS ASSOCIATION

### CERTIFICATE OF PROFICIENCY IN PERSONAL INSOLVENCY ENGLISH

Examination 6 June 2014

---

**INSOLVENCY**

---

**(3 HOURS)**

---

- Part A:** All questions to be answered (10 x 1 mark questions)  
**Part B:** All questions to be answered (5 x 2 mark and 5 x 4 mark questions)  
**Part C:** All questions to be answered (2 x 15 mark questions)  
**Part D:** Two from three questions to be answered (3 x 15 mark questions)

Candidates should answer Part A questions on the question paper itself which must be handed in whole at the end of the examination; candidates must enter their candidate number in the spaces provided in Part A of the examination paper.

Candidates should write their answers to all questions in Parts B, C and D separately on the answer paper provided, beginning each question on a new page.

The examiner will take account of the correct usage of English and the way in which the material is presented.

#### **NOTES**

Candidates should note that all questions are based on the law and best practice as at 1st January 2014.

Candidates must ensure that no pages from the examination paper are detached. At the end of the examination candidates must ensure that the question paper is attached to their answer papers using the treasury tag provided.

Candidates should remain seated until the Invigilator has collected the tagged question paper and answer papers. It is the candidate's responsibility to ensure that all answers are handed to the Invigilator.

References to the 'Act' are to the Insolvency Act 1986 as amended.

References to Sections and Rules are to the Insolvency Act 1986 and the Insolvency Rules 1986 as amended.

References to SIPs are to Statements of Insolvency Practice.

#### **Copyright Notice**

This examination paper and materials relating to it are copyright of the Insolvency Practitioners Association. No part may be reproduced in any material form except as may be authorised by law or with our consent in writing. All rights are reserved

**PART A**

**MULTIPLE CHOICE QUESTIONS**

**THE CORRECT ANSWER TO EACH OF THE QUESTIONS IS TO BE INDICATED BY PLACING A CROSS IN THE APPROPRIATE BOX. ONLY ONE ANSWER IS REQUIRED. THERE IS ONE MARK FOR EACH QUESTION.**

---

- 1 In accordance with s313A of the Act, what is the level of equity below which the Court will dismiss an application for possession by a Trustee in Bankruptcy?
- a) £1,000
- b) £100
- c) £500
- d) £0
2. In a Protocol Compliant IVA all funds received, after payment of the arrangement costs, must be used to pay dividends to unsecured creditors. If at the end of the arrangement there are funds left in the account does the Supervisor have any discretion to return these funds to the debtor?
- a) No – all funds must be utilised to pay dividends
- b) Yes – but only up to a limit of £100
- c) Yes – but only up to a limit of £200
- d) Yes – no limit – but the Supervisor must show that it would not be cost effective to distribute the remaining funds
3. If a Trustee in Bankruptcy wishes to resign from office, the Trustee must call a meeting of creditors for the purpose of receiving the resignation. Who else must be sent notice of this meeting?
- a) The Official Receiver only
- b) The Official Receiver and Bankrupt
- c) The Bankrupt only
- d) No-one else requires notice
4. What is the minimum value of the specific penalty bond which office holders are required to take out for each insolvency appointment?
- a) £499
- b) £5,000
- c) £10,000
- d) There is no minimum value

5. A trustee in bankruptcy must immediately resign his office in which one of the following circumstances?
- a) If the firm in which he is a partner merges with a firm who were tax advisors to the debtor
  - b) He is disqualified from acting as an insolvency practitioner
  - c) If a joint trustee resigns his office
  - d) If he is convicted of an offence involving dishonesty
6. A debtor owes £3,890 to their creditors and has surplus income of £75 per month after settling essential expenses. They are a home owner. Given these facts, what personal insolvency option would you recommend?
- a) Bankruptcy
  - b) Individual Voluntary Arrangement
  - c) Debt Management Plan
  - d) Debt Relief Order
7. In a Protocol compliant IVA, if a debtor has outstanding tax returns at the date of the creditors' meeting, what time limit is in place for those returns to be brought up to date with HMRC?
- a) 3 months from the date of approval
  - b) 3 months from the date of the proposals
  - c) 3 months from the date of the Chair's report
  - d) By the time of the first annual report
8. What is the maximum period that can be agreed for a Bankruptcy Restrictions Undertaking?
- a) 2 years
  - b) 10 years
  - c) 15 years
  - d) No maximum period
9. Which SIP deals with Proxy Forms?
- a) SIP 10
  - b) SIP 12
  - c) SIP 7
  - d) SIP 3
10. Where an office holder chooses to make a report available to creditors via a website rather than in hard copy, for what period must the report be available on the website?
- a) Two weeks
  - b) Three weeks
  - c) Three months
  - d) For whatever period the office holder deems appropriate

## **PART B**

**QUESTIONS 11-15 ARE 2 MARK QUESTIONS, QUESTIONS 16 – 20 ARE 4 MARK QUESTIONS. ALL THESE QUESTIONS SHOULD BE ANSWERED ON A SEPARATE SHEET OF ANSWER PAPER.**

11. A Trustee in Bankruptcy may obtain a charge on a bankrupt's home under s313A of the Act for the 'charged value'. What does s313A of the Act advise is the 'charged value'?
- (2 marks)**
12. Where an IVA was approved at a meeting of creditors after an Interim Order has been obtained and the IVA has been completed, the Supervisor sends notice to the creditors and debtor but can only vacate office when notice is sent to whom?
- (2 marks)**
13. Who may take part in the public examination of a bankrupt and question him concerning his affairs, dealings and property and the causes of his failure?
- (1/2 mark per point up to 2 marks)**
14. Under Schedule 6 of the Rules, what is the scale for a Trustee's remuneration for funds distributed?
- (2 marks)**
15. Who can chair the creditors' meeting in an IVA?
- (2 marks)**
16. Outline who may make an application to the court that an IVA which has been approved unfairly prejudices the interests of a creditor of the debtor?
- (4 marks)**
17. You are advising the partners of a firm who are seeking guidance on whether IVAs may be utilised as a way of dealing with their partnership debts. Provide a brief summary of how IVAs may be of assistance in dealing with the debts of a partnership.
- (4 marks)**
18. What information must be included on Form 6.83 when providing notice to interested parties of a dwelling house falling within s283 of the Act?
- (1/2 mark each to a maximum of 4 marks)**

**19.** State four matters that constitute a breach of a protocol compliant IVA according to the Protocol.

**(4 marks)**

**20.** When declaring a dividend what particulars relating to the insolvency and administration of the insolvent estate should be given to creditors by the office holder?

**(4 marks)**

## **PART C**

### **BOTH QUESTIONS TO BE ANSWERED ON A SEPARATE SHEET OF ANSWER PAPER**

21. Jim was made bankrupt on 24 May 2013 under his own petition. Your principal was appointed his trustee in bankruptcy on 31 July 2013. Jim and his wife Becky bought a house together in 1999 which was in joint names. Jim was a self-employed consultant in the construction industry and Becky worked part-time in the local school as a classroom assistant earning £7,500 a year.

The books and records indicate that the couple each drove a Mercedes sports car until they were repossessed, wore designer clothes and, with their two children aged 15 and 11, enjoyed regular foreign holidays at least twice a year up until 2011 when Jim attributes the failure of his business to a drop in turnover.

You recently had the house valued at £300,000 and there are two charges registered at HM Land Registry, one taken out when the house was bought which has £150,000 outstanding on it and the other granted in 2002 to secure Jim's business overdraft which stands at £75,000.

You have, based on these figures available, calculated the trustee in bankruptcy's interest in the equity at £35,000 after allowing for the charges, notional costs of sale of £5,000 and Becky's share of the equity. You wrote to Becky on 18 April 2014 setting out your calculation and inviting her to make an offer for the trustee's interest in the property.

You received a letter yesterday from Rooney & Co, Becky's solicitors. They have indicated that their client does not accept that her interest in the property should be used to pay any of the bank's second charge claiming that it should all come out of Jim's share leaving the trustee with no equity.

#### **Requirement:**

a) Prepare calculations for your principal setting out the equity calculations to show the level of equity that you believe the Trustee holds and how Rooney & Co have calculated the position.

**(4 marks)**

b) Prepare a note for your principal setting out:

i. The arguments against Rooney & Co's letter based on your current knowledge of the case.

**(7 marks)**

ii. The evidence that you would expect to see to support a claim from Becky; and

**(1/2 mark per point up to 2 marks)**

iii. Advise the Trustee on what steps he should take next.

**(1/2 mark per point up to 2 marks)**

**Total 15 marks**

**22.** Your principal has been approached by an individual who is the sole trader of a small engineering business and is in financial difficulty as a major contract was lost and despite cost cutting measures, debts, especially to HMRC, have accrued.

The debtor is not an undischarged bankrupt and has never been in financial difficulties previously.

The individual was thinking about ceasing to trade but has just signed a significant contract and he would like to be able to deal with his debts and keep the business running. The contract does not start for three months however and the first payments under the contract are not due until a couple of months afterwards.

This contract and the other work the individual carries out will mean the business would trade profitably.

HMRC have debts accrued for various taxes of £35,000 and they have issued a statutory demand.

Your principal has reviewed the business and the new contract and believes the business is viable and recommends that to deal with the historic debts an IVA should be proposed to creditors.

An early conversation was had with HMRC but they refused to stay enforcement action and have said that they will shortly issue a bankruptcy petition.

Your principal has come to you for advice on what he can do as Nominee. He is aware that an Interim Order can be obtained to provide a moratorium to prevent further enforcement action.

**Requirement:**

Prepare a memo for your principal providing information on:

- i. What needs to be lodged at Court for an Interim Order application and what must be included in the witness statement to Court on the application for an Interim Order.

**(1/2 mark per point up to 3 marks)**

- ii. Who must be served with the application for an Interim Order and what is the relevant notice period prior to the hearing. Does HMRC need to be served with a copy and if not, why not?

**(2 marks)**

- iii. On what matters is the Nominee required to report to the court before the interim order ceases to have effect under s256 of the Act?

**(2 marks)**

- iv. On what other matters should the Nominee comment in his report?

**(8 marks)**

**Total 15 marks**

**PART D**

**TWO OF THE THREE 15 MARK QUESTIONS TO BE ANSWERED**

**23. a) What are the bases upon which an office holder's fees may be approved? (4 marks)**

**b) You have drafted an annual report for an insolvency assignment and are considering the information that needs to be provided to creditors in respect of their understanding that the remuneration charged to the estate is reasonable as outlined in Statement of Insolvency Practice 9 (SIP 9).**

You are aware that there is a remuneration resolution in place that fees can be drawn on a time costs basis and that for the period of the report the time charged is £14,500 and in total fees of approximately £32,000 are expected during the life of the case.

Set out in tabular format the headings and categories for reporting time costs as required by SIP 9. You do not need to populate the table with allocated costs.

**(5 marks)**

**c) In accordance with SIP 9 reports to creditors should provide a narrative overview. What are the relevant matters for such an overview in respect of reporting on remuneration matters?**

**(1/2 mark per point up to 2 marks)**

**d) Explain what is meant by Category 1 and Category 2 disbursements and provide two examples of each.**

**(4 marks)**

**Total 15 marks**

**24.** If a debtor believes he may qualify to be able to apply for a Debt Relief Order (DRO) he makes the application via an approved intermediary.

**a)** What information is to be included in the application for a DRO?

**(1/2 mark per point up to 5 marks)**

**b)** What matters should the debtor deal with and state/advise for the DRO application?

**(1/2 mark per point up to 8 marks)**

**c)** Apart from secured or protected tenancies, name three other assets that will be excluded for the purposes of determining the value of an applicant's property.

**(3 marks)**

**Total 15 marks**

25. The Individual Voluntary Arrangement of Sheila Poveda was approved on 15 May 2012. She traded as a self-employed physiotherapist and a summary of her statement of affairs showed the following:

	£
Matrimonial property	168,000
Mortgage	98,000
Husband's half share	<u>(35,000)</u>
	35,000
Motor vehicle (excluded)	4,500
Tools of trade (excluded)	3,750
Shares (excluded)	5,000
Pension fund	<u>38,000</u>
	86,250

The main provisions of her proposal were as follows:

- She was to continue trading as a physiotherapist to enable monthly contributions from trading of £1,000 per month for a period of 48 months.
- Her property was to be re-mortgaged by month 40 of the arrangement to release her beneficial interest in the property estimated at £35,000.
- Her father was to provide a lump sum of £25,000 in lieu of the pension fund lump sum which Sheila would be entitled to draw on her 50<sup>th</sup> birthday which is due to fall on the conclusion of the arrangement.

A review of the case files has shown that Sheila is currently three months in arrears with her contributions. A modification to the proposal states that the Supervisor must fail the arrangement should contributions fall more than two months in arrears.

You have had discussions with Sheila and she has advised that she has had to reduce the number of hours she can work in order to care for her father who has become very ill. She does not see that she can increase her hours in the near future and is unable to make up the arrears. She also tells you that she has incurred post arrangement liabilities of £18,500 that you were previously unaware of.

**Requirement:**

- a) Detail the steps the supervisor should take to fail the arrangement and what considerations should be taken into account in dealing with the funds in hand at present.

**(10 marks)**

**b)** What assets would be available to a Trustee in a subsequent bankruptcy?

**(4 marks)**

**c)** Would your answer to b) differ if the Arrangement had not failed but a petition had been presented by a post arrangement creditor?

**(1 mark)**

**Total 15 marks**