



INSOLVENCY PRACTITIONERS ASSOCIATION

CERTIFICATE OF PROFICIENCY IN PERSONAL INSOLVENCY

SCOTLAND

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 (Scotland) Rules 1986 (as amended).

References to the '1985 Act' are to the Bankruptcy (Scotland) Act 1985 (as amended).
References to the PTD Regs are to the Protected Trust Deeds (Scotland) Regulations 2013.
References to SIPs are to Statements of Insolvency Practice (Scotland).

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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 The Trustee in a sequestration has a duty to notify a non-entitled spouse of the sequestration and their rights under Section 16 within what timescale?
- a) As soon as reasonably practicable
- b) Within five weeks of the award of sequestration
- c) Forthwith
- d) Within 14 days of the award appointing the Trustee
2. What is the maximum period that can be agreed for a Bankruptcy Restrictions Undertaking?
- a) Two years
- b) Ten years
- c) Fifteen years
- d) No maximum period
3. In a Protected Trust Deed how many contributions must the debtor miss before the Trustee can insist that the debtor instruct his employer to make payments direct to the Trustee?
- a) Three payments over a six month period
- b) Two consecutive payments
- c) One payment
- d) None, the trustee can insist from the outset
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 debtor owes £3,890 to his creditors and has a surplus monthly income of £75 per month after settling essential expenses. He is a home owner. What personal insolvency option would you recommend?
- a) Bankruptcy
- b) Protected Trust Deed
- c) DAS
- d) All of the above

6. How many creditors have to object to a DAS proposal before it is referred to the DAS Administrator for a 'fair and reasonable' test?
- a) One third in value
 - b) 50% or more in number
 - c) One creditor
 - d) 50% or more in value
7. In a Protected Trust Deed what is the date of the debtor's discharge?
- a) Date the last contribution is paid
 - b) Date the Accountant in Bankruptcy records the Form 5 in the Register of Insolvencies
 - c) Four years from the commencement of the Trust Deed
 - d) Date of the Trustee's discharge
8. After considering a creditor's petition for sequestration, the Sheriff grants a warrant to cite. To whom must the Sheriff Clerk send a copy of the order?
- a) Accountant in Bankruptcy
 - b) Keeper of the Register of Inhibitions and Adjudications
 - c) DAS Administrator
 - d) All of the above
9. Which SIP deals with Proxy Forms?
- a) SIP 10
 - b) SIP 12
 - c) SIP 7
 - d) SIP 3
10. Which of the following powers requires sanction before an Interim Trustee can exercise?
- a) Carry on any business of the debtor
 - b) Arrange for the sale of perishable goods
 - c) Enter the house where the debtor resides
 - d) Require the debtor to implement a transaction

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. Section 6 of the Bankruptcy (Scotland) Act 1985 (as amended) relates to the sequestration of other estates. What other estates can be sequestrated?

(2 marks)

12. How is the remuneration of a trustee under a protected trust deed calculated?

(2 marks)

13. List two advantages for a debtor of entering into a Debt Arrangement Scheme.

(2 marks)

14. Who may take part in the public examination of a bankrupt debtor and question him concerning his assets, dealings with them and his conduct in relation to his business or financial affairs?

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

15. List two effects of a Trust Deed becoming protected.

(2 marks)

16. Give four reasons why the Accountant in Bankruptcy would refuse to register a debtor's discharge.

(4 marks)

17. Who has an obligation to deliver up to a Trustee in bankruptcy any property, books, papers or other records in their possession which the Trustee requires?

(1 mark per point up to 4 marks)

18. What must an insolvency practitioner advise someone who is considering signing a trust deed?

(1/2 mark per point to a maximum of 4 marks)

19. Name four of the five parties involved in a Debt Arrangement Scheme.

(4 marks)

20. Explain how the date for claims is different depending on the type of personal insolvency procedure.

(1 mark per point up to 4 marks)

PART C

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

21. You are responsible for the administration of the sequestration of Jim Burns. Jim was a self-employed builder and was made bankrupt, by a creditor, on 18 July 2013. Your principal was appointed his trustee in bankruptcy. Jim and his wife Becky bought a house together in 2005. The house is in joint names although Becky borrowed the deposit of £20,000 from her parents, Mr and Mrs McCormack.

Becky is employed as a full time teacher and has no involvement in the business. Jim has moved out of the property and Becky and Jim are in the process of getting a divorce. Becky has maintained all of the household expenses including the mortgage repayments.

You have recently had the property valued at £320,000 and have established there are two charges registered against the whole of the property; one being the original mortgage with the Scottish Savings Bank which has £150,000 outstanding and the other is in respect of Jim's business overdraft which stands at £75,000. Becky was advised of the implications of co-signing the security documents at the time Jim applied for the overdraft.

You wrote to Becky via her solicitors Rooney & Co, quantified the Trustee's interest at £47,500 and invited an offer from Becky to buy out your interest. Rooney & Co have written back and questioned your calculation of the equity and advised that Becky thinks her mum and dad are entitled to be repaid and she states that Jim is liable for the business overdraft and based on the current figures provided by you when she sells the property there will be no funds for the insolvent estate.

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.

(3 marks)

- b) Prepare a memo to the Trustee dealing with the issues raised in Rooney & Co's recent letter and highlight potential issues regarding the property and the options available to the Trustee to realise his interest.

(12 marks)

Total 15 marks

- 22.** Danny Divers was a 50% partner in the firm of Duck and Dive which was sequestrated 19 April 2013. He was subsequently sequestrated by a partnership creditor on 13 June 2013. The warrant to cite was the 31 May 2013. The petitioning costs totalled £534.50.

You have not interviewed Mr Divers but he has provided you with a completed Form 3 – Statement of Assets and Liabilities which provides the following information:

Partnership Assets:

- Stock ETR £150
- Debtors £4,000

Partnership Debts:

- £142,000

Personal Assets:

- Jointly owned property at 12 Sunnyside Crescent, Dundee valued at £280,000.
- Mortgage to Midtown Bank £246,000.
- 2007 BMW 320i valued at £2,465.
- 2000 shares bought at £1.98 per share.

Personal debts:

- £53,000.

Required

- a. Assume all figures on the Form 3 are confirmed and compile a statement of affairs with any supporting notes you deem appropriate.

(7 marks)

You realise all assets within the first year and are now preparing to lodge your first account with the Accountant in Bankruptcy for formal audit. You have completed your formal adjudication of claims and have admitted claims in line with the information in Form 3. The property at Sunnyside Crescent sold for £292,000 and the secured creditor was paid in full. Selling costs were 1.5% of the sale proceeds and legal costs totalled £2,200. When the shares were sold they were trading at £3.01. The sales commission was 2%. Your fees to date are £5,200 and you estimate a further £1,800 of time costs will be incurred to pay the dividend and close the case.

Required

- b. Prepare the scheme of division to go with the account and confirm the rate of dividend payable to ordinary creditors. Ignore VAT and assume there are no non-statutory outlays.

(8 marks)

Total 15 marks

PART D

TWO OF THE THREE 15 MARK QUESTIONS TO BE ANSWERED

23. a) What will be taken into account when fixing the level of remuneration payable to the Trustee in a sequestration?

(2 marks)

b) What is the period for appealing any determination?

(2 marks)

c) You have preparing to lodge your first account with commissioners in a sequestration and are considering the information that should be provided to substantiate that the time charged to the case, and claimed as remuneration, is reasonable as outlined in SIP 9 (Scotland).

The remuneration is charged on a time cost basis. Time costs for the period are £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 suggested by Appendix A of SIP 9 (Scotland). You do not need to populate the table with allocated costs.

(5 marks)

d) In accordance with SIP 9 (Scotland) 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)

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

(4 marks)

Total 15 marks

- 24.** Your principal has been approached by Steve Hughes who is the sole trader of a small manufacturing business, trading from leasehold premises in Dumfries. His business is in financial difficulty as a major contract was lost and despite cost-cutting measures, debts, especially to H M Revenue & Customs have accrued.

He 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. However, the contract will not start for three months and the first payments are due a couple of months afterwards. There is no one he can call on to provide any funds to alleviate the financial pressure.

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

H M Revenue & Customs have debts accrued for various taxes of £35,000. They have issued a statutory demand and intend petitioning for Mr Hughes' sequestration. Mr Hughes does not dispute the debt.

Your principal discussed in very general terms the options available to him and has asked you to contact Mr Hughes to get additional information to enable a full assessment of the options.

Requirement:

1. What steps could be taken to give Mr Hughes more time to consider his options?
(3 marks)
2. What specific information do you require to enable you to provide a comprehensive list of pros and cons of the various debt management/insolvency options available to Mr Hughes?
(12marks)

Total 15 marks

