



**INSOLVENCY PRACTITIONERS ASSOCIATION
CERTIFICATE OF PROFICIENCY IN PERSONAL INSOLVENCY**

SCOTLAND
Examination 5 December 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 From which of the following liabilities does a debtor in a Sequestration receive his discharge?
- a) A liability to pay a fine imposed by the Sheriff
 - b) A student loan
 - c) Any liability incurred by reason of fraud or breach of trust
 - d) Arrears due to the Child Support Agency
2. Which of the following may not sign a Trust Deed?
- a) A debtor who has been sequestrated and their Trustee has not been discharged
 - b) An individual subject to an approved Debt Payment Plan
 - c) A partnership
 - d) A limited partnership
3. Under a Debt Arrangement Scheme who makes payments to the debtor's creditors? Is it:
- a) Debtor
 - b) DAS Approved money advisor
 - c) DAS Administrator
 - d) DAS Payments Distributor
4. What is the minimum value of an individual's debts if they wish to apply for a Trust Deed? Is it:
- a) £5,000
 - b) £10,000
 - c) £15,000
 - d) There is no minimum value

5. When refusing to apply for a debtor's discharge under the PTD Regs, the Trustee is obliged to inform the debtor of his decision. Which of the following information is not required to be disclosed to the debtor?
- a) The debtor's right to apply to the Sheriff for a direction as regards the administration
 - b) The reason for the refusal
 - c) The debtor remains bound by the terms of the Trust Deed
 - d) The debtor's right to appeal to the Accountant in Bankruptcy
6. Which element of an individual's claim as an employee wholly preferential without limit?
- a) Redundancy
 - b) Wage arrears
 - c) Holiday pay
 - d) Pay in lieu of notice
7. Which SIP deals with Trust Deeds? Is it:
- a) SIP 3A (Scotland)
 - b) SIP 1 (Scotland)
 - c) SIP 11 (Scotland)
 - d) SIP 14 (Scotland)
8. How many days' notice must be given to creditors of the initial meeting in a Sequestration?
- a) At least 14 days before the meeting
 - b) At least 28 days before the meeting
 - c) At least 7 days before the meeting
 - d) As soon as reasonably practicable
9. In a Trust Deed based mainly on contributions from income, what is the minimum period for which contributions will be expected to be made?
- a) There is no minimum period
 - b) 12 months
 - c) 48 months
 - d) 36 months
10. In a Debt Arrangement Scheme, what is the maximum fee that may be charged by a Payment Distributor?
- a) 8% of sums available for distribution
 - b) 10% of sums available for distribution
 - c) £50 per distribution
 - d) There is no maximum

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. Who may apply/petition for Sequestration for a living debtor?

2 marks

12. In a Sequestration what is the role of the Trustee at a statutory meeting of creditors and what duties must he undertake at the meeting?

2 marks

13. Where the jointly owned family home of the debtor is required to be sold by the Trustee in Sequestration, what consent is required and what action will be required to be taken if such consent is not obtainable?

2 marks

14. What value of creditors may object to a Trust Deed becoming protected?

2 marks

15. Under the PTD Regs what is required to permit electronic delivery of notices etc and what constitutes proof of delivery?

2 marks

16. What are the duties of a DAS Approved money advisor?

4 marks

17. When giving advice to a debtor about a Trust Deed which booklet must be given to them by the IP and what information does it contain?

4 marks

18. What is the priority of distribution in a Sequestration?

4 marks

19. Prior to the debtor granting a Trust Deed what must the Trustee advise the debtor that granting the Trust Deed may result in?

4 marks

20. What are the supervisory and other roles of the AiB as set out in Section 1A of the 1985 Act?

4 marks

PART C

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

21. Your principal was appointed Trustee of the sequestrated estate of Kevin Burns on 12 August 2014. You have been asked to review the file and have obtained the following information:-

- The debtor owns his house jointly with his spouse and title is divided 60:40 in the debtor's favour. An independent surveyor has valued the property at £320,000 and you have confirmation that the mortgage redemption figure is £285,000.
- He has an investment portfolio estimated to be worth £5,000.
- He has a vehicle valued at £10,000 by a local garage which is free of finance. His wife has indicated that she will buy out the Trustee's interest.
- He currently makes a contribution of £200 a month.
- Ordinary creditors total £80,000.
- The petitioning creditor's costs are £400
- No Commissioner was elected
- Trustee's fees and outlays are estimated at £5,500

Requirement

a) Prepare an Estimated Outcome Statement with the anticipated level of dividend to ordinary creditors. Record any assumptions made in compiling the statement.

(11 marks)

b) One of the creditors of Mr Burns has indicated that he is interested in acting as Commissioner; he has asked you to give a brief explanation of what the role involves and how he can take up the position. Summarise the role and process for him, commenting on what would stop him becoming commissioner.

(4 marks)

Total 15 marks

PART D

TWO OF THE THREE 15 MARK QUESTIONS TO BE ANSWERED

23. Connor Graham has contacted you for some advice. He is 34 years old, single and employed as a researcher at The University of Glasgow. Since splitting up with his long term partner, Julie, 18 months ago he has been living in rented accommodation. He advises you that following the split he went a bit wild and now has unsecured debts of £5,760 that he is struggling to repay and meet his day to day living costs and some of his creditors are threatening to take action to recover their debts. He wishes to avoid Sequestration if at all possible.

Following a review of his income and expenditure you determine, on the figures available, that Connor has a monthly disposable income of £135.

Requirement:

- a) What financial options would you consider to be most appropriate given Connor's current financial position? Explain your reasoning.

(5 marks)

- b) Further enquiries reveal that Connor's actual debts are £14,890. Would your initial advice still be appropriate? What alternative option(s) would you consider and why?

(5 marks)

- c) Connor indicates he wants to petition for his Sequestration. Advise him on the criteria to be met and the process.

(5 marks)

Total 15 marks

24. Your principal has been appointed as Trustee of the sequestrated estate of Timothy Cobb. You obtain the following information:

Mr Cobb was made bankrupt on 1 February 2014 on a petition presented by Natclays Bank on 19 December 2013. He used to run a garage/car repair business but he found he could not compete with larger operations and a run of ill health meant that from late 2012 the business was struggling and losing money. He finally accepted that he could not sustain the business and ceased to trade in November 2013. He had hoped to find work to be able to repay creditors, but has only recently secured alternative employment.

At his initial interview he confirmed he had no assets and lived in rented accommodation. You have established the following:

He withdrew £8,000 during July 2013 to repay a supplier to his garage who turned up at his house with a friend and gave him 48 hours to repay him the money he owed or he would return to "sort things".

In the week before he ceased trading he used the last remaining £5,000 in the bank to pay Speedy Quick Supplies for supplies necessary to finish off a contract for one of the local bus companies. You established the actual stock delivered was valued at £1,800 and the remaining balance settled the account due to Speedy Quick Supplies, which had been outstanding for six months.

The bus company have not been invoiced for the work done in the last week of trade.

In December 2012 he transferred a Cadillac Deville worth £23,000 to his son, Peter, for no consideration, "for a Christmas present to remember".

He sold a damaged Jaguar XJS to his neighbour, William, for £10,000. A similar car in excellent condition is worth £35,000. The sale happened sometime in December 2011.

When he ceased trading in November 2013 he used his credit card to book an all-expenses paid holiday for his wife and three adult children and their partners which cost £12,000.

Requirement

Write a memo to your principal advising what assets may be available to the trustee in bankruptcy and what issues should be considered.

15 marks

25. You are dealing with the Sequestration of sole trader, Gary Marks. He traded as Too Cute to Bear, manufacturing cuddly toys and was sequestrated following a petition by a supplier. The warrant to cite was dated 1 October 2014 and trading ceased on appointment of the Trustee on 16 October 2014. You have established the following information:

- 1) The debtor resides, with his wife, in the jointly owned property at 12 Leander Drive, Greenock. You have a survey which has valued the property at £220,000. The Royal Clydeside Bank plc hold first charge for £125,000 and there is a second charge to Blackhouse Limited which has been confirmed at £65,000.
- 2) He had a Mercedes which is subject to hire purchase. It has been valued at £23,000 and the Hire Purchase Company has confirmed there is £27,347 outstanding on the agreement.
- 3) The credit union has advised he has an outstanding loan of £2,900 and shares of £1,500.
- 4) He leased commercial premises at Unit 3B, Shore Road Industrial Estate, Gourrock. The debtor believes the lease is worth £20,000, however you have established it has no value. There are rent arrears of £7,000 due to the landlord. In addition to this, the landlord has a claim for dilapidations for the sum of £15,000.
- 5) There is plant & machinery with a book value of £10,000 and an estimated to realise value of £5,000.
- 6) You have been advised that although there is stock with a book value of £15,000. It is expected that a trade creditor, Mr Nice who has an unsecured claim for £5,500, has a valid retention of title claim over stock delivered to the business with a value of £4,000. The value of the balance of the stock is £2,500.
- 7) The business has trade debtors with a book value of £32,000, £15,000 of which is more than six months overdue. The debtor believes that 75% of the remaining debts will be recoverable.
- 8) You have established that there is a VAT refund of £3,200 in respect of the last quarter's return.

The following claims have been received from creditors:

- 9) In addition to the claim submitted by Mr Nice trade creditors have submitted claims of £43,500. Mark has personal debts of £23,000, of which £10,000 are joint with his wife. He has a bank overdraft of £35,000, which his wife has given a personal guarantee which is limited to £12,000.
- 10) HM Revenue & Customs have submitted claims of £18,000 in relation to PAYE/NI.
- 11) There are two former employees each of whom are owed two weeks holiday pay and four weeks wage arrears at £525 per week. In addition to this, each employee is claiming redundancy totalling £5,750.

Requirement

Prepare a statement of affairs; include brief explanatory notes and workings.

15 marks