



## INSOLVENCY PRACTITIONERS ASSOCIATION

### CERTIFICATE OF PROFICIENCY IN PERSONAL INSOLVENCY ENGLISH

Examination 5 June 2015

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**INSOLVENCY****(3 HOURS)**

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- 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 2015.

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.

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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.**

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- 1 On what date is a bankruptcy deemed to commence?
- a) The date the bankruptcy petitioner's debt was incurred
  - b) The date of the bankruptcy petition
  - c) The date of the bankruptcy order
  - d) The date an Insolvency Practitioner is appointed trustee in bankruptcy
2. The trustee in bankruptcy may, by giving notice in writing, lay claim to certain items which are deemed to be of excess value for the benefit of the bankruptcy estate. Within what time period of becoming aware of these items must the trustee give written notice?
- a) Within 42 days
  - b) Within 21 days
  - c) Within 14 days
  - d) There is no time limit
3. A supervisor of an individual voluntary arrangement ("IVA") intends to call a meeting of creditors to consider a variation to the arrangement. How many days' notice of the variation meeting is he required to give creditors?
- a) At least 7 days
  - b) At least 14 days
  - c) At least 21 days
  - d) At least 28 days
4. Which SIP deals with individual voluntary arrangements?
- a) SIP 3.1
  - b) SIP 5
  - c) SIP 11
  - d) SIP 14
5. Which of the following matters would the Court not take into account when looking at an application for an order for possession and sale made by a trustee in bankruptcy?
- a) Needs of any children
  - b) Bankrupt's interests
  - c) Interests of the bankrupt's creditors
  - d) Conduct of the bankrupt's spouse in contributing to the bankruptcy

6. Having been discharged from a Debt Relief Order ("DRO") 12 months ago, a debtor has approached you and is asking for advice on how to deal with debts of £12,500 incurred since the discharge of the previous DRO. She wants to know whether she can apply for a new DRO in order to deal with these debts. Which of the following statements is true?
- a) The debtor can apply with permission of the Court
  - b) The level of debt is too high thus she is not eligible for a DRO
  - c) She is not eligible for a DRO as six years has not passed since the first DRO
  - d) She must first be in a debt management arrangement in order to apply
7. Within what period of time must a trustee in bankruptcy deal with the bankrupt's interest in a dwelling house in order to prevent it re-vesting in the bankrupt?
- a) Within three years of the date of the bankruptcy order
  - b) Within 12 months of the appointment of the trustee
  - c) Within two years of the presentation of the petition
  - d) Prior to the debtor's discharge
8. How many days' notice is a trustee in bankruptcy required to give creditors of a final meeting in bankruptcy?
- a) 7 days
  - b) 14 days
  - c) 21 days
  - d) 28 days
9. Which of the following is not a fundamental principle as outlined in the Code of Ethics?
- a) Transparency
  - b) Integrity
  - c) Objectivity
  - d) Confidentiality
10. Which of the following is not a qualifying debt which can be included in a debt relief order DRO?
- a) Benefits overpayment
  - b) Credit card debts
  - c) Business debts
  - d) Student loans

**PART B**

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

11. At a meeting of creditors convened to seek approval for an individual voluntary arrangement (“IVA”), a claim has been submitted by a creditor for an unliquidated debt. For what amount should the Chair admit the claim for voting purposes?

**(2 marks)**

12. Where no individual voluntary arrangement (“IVA”) is being proposed, what are the grounds available to annul a bankruptcy order?

**(2 marks)**

13. What criteria needs to be met for an individual to be eligible to apply for a debt relief order (“DRO”)?

**(2 marks)**

14. It has been brought to your attention that a bankrupt has excess income for which it is your intention, as trustee in bankruptcy, to apply for an Income Payment Agreement (“IPA”).

What matters should be considered when making this application?

**(2 marks)**

15. The IVA Protocol provides that the IVA provider should, when obtaining information on the debtor’s affairs, seek to verify the information provided by the debtor. According to the requirements of the protocol how should the IVA provider verify;

- i. The outstanding balances due to creditors; and
- ii. The income of the debtor.

**(2 marks)**

16. Explain the role of the nominee and the supervisor in an individual voluntary arrangement ("IVA").

**(4 marks)**

17. What is the definition of a transaction at an undervalue in accordance to Section 339 of the Act?

**(4 marks)**

18. A bankrupt has recently contacted you in respect of their estate following being made bankrupt on 30 April 2015. He has requested details of what, if any, assets are excluded from their estate.

Advise accordingly.

**(4 marks)**

19. What information should the trustee in bankruptcy disclose to creditors in the notice of intended dividend?

**(4 marks)**

20. You have been advising Helen Carter who is in financial difficulty following a prolonged period of illness which prevented her from working as a self-employed gardener.

Now that she is better and back at work full time she is seeking to put together a proposal for an IVA. The arrangement provides for 60 monthly contributions from her income to be made in the sum of £100 per month, an investment bond to be realised in month 28 which is expected to realise the sum of £12,000 and equity to be released in month 48 which, on current values, is expected to provide an injection of funds into the arrangement in the sum of £18,000.

The nominee's fee is expected to be £3,000 and the supervisor is expected to receive the sum of £1,000 per annum over the five year term of the arrangement.

Creditors total £42,500.

**Requirement;**

- i. Calculate the sum for which the supervisor should bond for in each of the years of the arrangement.
- ii. For what amount should the nominee bond?

**(4 marks)**

## **PART C**

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

21. Fred Jones runs a small bakery in Nantwich. He has just been notified that a bankruptcy order has been made against him and he has contacted you, somewhat belatedly, for some advice.

**Requirement;**

Write a letter to Fred explaining what the consequences are for him following the bankruptcy order being made, his obligations and the restrictions of being a bankrupt.

**Total 15 marks**

22. You have recently been contacted by Mark Clark who operates as a sole trader of the flower shop "Flowers for All" in Oxford. During the past twelve months or so the business has been deteriorating which has led to a strain on the business and to Mark incurring significant personal debt.

He has provided you with the following information:

1. The stock is held at a retail value of £3,500. However, should the shop close the stock would be worthless.
2. The shop operates from leasehold premises which have recently been valued at £80,000. Speedy Bank Plc. has a fixed charge over the property in the sum of £65,000. There are also service charge arrears of £800 due to the freeholder.
3. He is not registered for VAT.
4. The fixtures and fittings in the shop have an estimated to realise value of £5,000 on a going concern basis and £1,000 on a forced sale basis.
5. The business uses a van for the purpose of making flower deliveries and is valued at £4,500.
6. From a cash-flow forecast Mark has provided in relation to the business, it states that he expects the following profits over the next three years, 80% of which would be available for the benefit of the creditors.
  - Year 1            £15,000
  - Year 2            £20,000

- Year 3            £25,000

7. Mark has advised that recently he has provided flowers for several weddings to the value of £1,500 which he expects to be paid in full within the next couple of weeks.

He has also advised that he has provided several more quotes for wedding flowers which, should these quotes be fulfilled, are likely to generate an additional revenue of £2,700 should the business continue to trade.

8. He has one part time employee who assists in the shop during busy times and at the weekends for wedding events. The employee earns £9,000 per annum gross and £6,500 net. You have been advised that she is fully paid up to date.

9. Annual overheads in respect of the business are as follows;

- Insurance - £1,500
- Business Rates - £500
- Electricity - £200
- Miscellaneous items including stationary, telephone and advertising - £100

10. Mark owns a freehold property which he owns jointly with his wife. He estimates that it is worth £320,000. There is a mortgage of £200,000 in favour of The National Bank Society. Mark is proposing to leave the property out of the arrangement.

11. In consideration of the above, Mark's father-in-law will contribute the sum of £2,500 per month for the duration of the arrangement.

12. Mark's pension policies have a current fund value of £120,000 and he owns a BMW motor vehicle which he uses while not at work with a value of £15,000.

13. The business bank account currently has a credit balance of £200.

14. In respect of his personal bank dealings he has a bank loan for £17,500, credit card debts of £25,000 and business creditors totalling £65,000.

15. Mark also owes £5,000 to his previous partner in respect of child maintenance.

16. The nominee's fee is £5,000 and it is expected that the supervisor's remuneration will be a further £5,000 per annum.

17. The Official Receivers' administration fee is £2,225 and the costs relating to the sale of the properties will be 1% of the sale proceeds.

18. Trustee's remuneration is based upon the Official Receivers' realisation fee scale only.

**Requirement;**

Prepare an estimated outcome statement from the information provided comparing bankruptcy and an IVA with a term of three years. Assume that if Mark were to be made bankrupt, trading would cease. Include brief explanatory notes and workings.

**Total 15 marks**

## **PART D**

### **TWO OF THE THREE 15 MARK QUESTIONS TO BE ANSWERED ON A SEPARATE PIECE OF PAPER**

- 23.** Sarah Carmichael is 33 years old and lives with her husband Ben and young son. They jointly purchased their house eight years ago and Sarah believes that the house is currently in negative equity.

Before she had her child Sarah ran a sole trader business providing wedding planning services however the last wedding that Sarah organised was a disaster and her clients took Court action against her.

Although Sarah won the Court case, she has been left with substantial legal costs in respect of her defence. Sarah has insufficient funds to pay the legal costs and has relied heavily on credit cards and loans to fund day to day living expenses.

Sarah has made an appointment with your partner so that she can enquire what options are available to her to help deal with her financial situation.

#### **Requirement;**

Prepare a memorandum for your partner to use in his discussions with Sarah, outlining all of the available options, both statutory and non-statutory, which are available to individuals.

Include a brief note of the main characteristics, advantages and disadvantages of each option.

**Total 15 marks**

- 24.** Mr George Ellis owns the lease of a convenience store in St Albans. He is a sole trader and lives above the shop. The business is profitable and for the year ended 31 March 2015 his gross profit was £45,000.

Mr Ellis owns an investment property. Following a falling out with his neighbour, Mr Previn, in regards to the boundary of his property and an ensuing Court case, Mr Ellis has been ordered to pay damages of £50,000 to Mr Previn. Costs have also been submitted in the proceedings totalling £30,000 but no order for costs has yet been made.

Mr Ellis realised he could not meet these liabilities and came to you for advice. You recommended an IVA, a proposal has been drawn up and you are acting as nominee. He intends to trade on and continue to pay the rent for the store.

The proposal is based on the proceeds of sale from the investment property and contributions from profits from the convenience store over a five year period. The projected dividend to unsecured creditors is 55p in the £.

In advance of the creditors' meeting to consider the proposals convened for 2 June 2015 you receive the following claims:

Creditor	£	Voting instructions	Modifications	Proxy
Dave Limited	5,200	For with modification	Cap supervisor's fees at £5,000	Chairman
Ed Trading Co	8,100	Against	None	Chairman (via fax)
Gregory Limited	-	For	None	Chairman
Landlord	70,000	Against	None	Chairman
Barwest Bank	75,000	For	None	Chairman (via email)
Mr Previn	80,000	For	None	Chairman
VJ Law (Mr Ellis' solicitors)	10,000	No proxy	None	A representative from VJ Law will attend in person
Mike Ellis (Mr Ellis' brother)	15,000	For	None	Chairman
Lacewing Limited	7,200	No proxy	-	-

The following additional information is available:

- Gregory Limited is owed £9,000 but has not lodged a statement of claim.
- The landlord is claiming £20,000 for two years future rent and £50,000 for estimated dilapidations. There is no supporting paperwork. The rent has been paid up to the June quarter day (24<sup>th</sup> June 2015).
- The debt to Barwest Bank is secured by charges over the shop (estimated value of security £1,000) and the investment property (estimated value of security £30,000).

**Requirement;**

- i. Set out how you would treat each claim for voting purposes, giving your reasons.

**(12 marks)**

- ii. Explain what the chairman of a creditors' meeting to approve a debtor's proposals should do if there are associates of the debtor with valid claims who wish to vote in favour of the proposals?

**(3 marks)**

**Total 15 marks**

- 25.** Your partner has been acting as trustee in the bankruptcy of Lisa Jones and he has asked you to assist with closing the case.

**Requirement;**

Prepare a memorandum to your partner setting out;

- i. The statutory formalities to be followed when closing a bankruptcy.

**(9 marks)**

- ii. Prior to formally closing the case what practical steps you should consider undertaking to ensure that the case is ready for closure.

**(6 marks)**

**Total 15 marks**