

**INSOLVENCY
ASSOCIATION**



PRACTITIONERS

**CERTIFICATE OF PROFICIENCY IN PERSONAL INSOLVENCY
ENGLAND & WALES**

Examination 4 December 2015

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 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.

1. For how many years must an insolvency practitioner maintain their own records after the dissolution of a company?
- a) 3 years
 - b) 4 years
 - c) 5 years
 - d) 6 years
2. On what date does the bankruptcy of an individual commence?
- a) The date of the presentation of the petition upon which the bankruptcy order is made
 - b) The date on which the statutory demand was served
 - c) The date of the making of a bankruptcy order
 - d) The date of the appointment of a trustee
3. Receipts equal to, or in excess of, what amount must be paid immediately into the Insolvency Service account in a bankruptcy?
- a) £100
 - b) £500
 - c) £1,000
 - d) £5,000
4. What is the maximum period of time for which an Income Payments Order ("IPO") in a bankruptcy can be in force?
- a) 12 months from the date of the bankruptcy order
 - b) 3 years from the date of the bankruptcy order
 - c) 3 years from the making of the IPO
 - d) Until the debtor receives his discharge

5. Where a creditor's proof of debt has been rejected, the trustee must send his reason for rejecting the proof, in writing to the creditor, who then has how many days to appeal to the court for the decision to be reversed or varied?
- a) 7 days
 - b) 14 days
 - c) 21 days
 - d) 28 days
6. What does SIP 11 deal with?
- a) Presentation of financial information in insolvency proceedings
 - b) The handling of funds in formal insolvency appointments
 - c) Records of meetings in formal insolvency proceedings
 - d) Proxy forms
7. Which of the following debts is not provable in bankruptcy?
- a) Future debt
 - b) Any fine imposed for an offence
 - c) Debt in a foreign currency
 - d) Pre-commencement interest
8. In a protocol Individual Voluntary arrangement ("IVA") the supervisor has the discretion to admit claims without the need for additional verification. What is the value of such claims?
- a) £500 or less
 - b) £1,000 or less
 - c) £1,500 or less
 - d) £2,000 or less
9. How many days' notice must be given to creditors of a meeting of creditors to consider an IVA proposal?
- a) 7 days
 - b) 14 days
 - c) 21 days
 - d) 28 days
10. Where no application for an extension is made, after what time period will an Interim Order ("IO") cease to have effect?
- a) 7 days
 - b) 14 days
 - c) 21 days
 - d) 28 days

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. Upon what grounds can a petition for default be presented following the failure of an IVA?

2 marks

12. Your principal has been administering a bankruptcy estate and has completed the asset realisations which have resulted in £20,000 being received into the estate.

Requirement;

Calculate the Secretary of State fee to be paid.

2 marks

13. You have been approached by James Fisher who operates a Bed and Breakfast business from his farm in Cheshire.

He has debts of £38,000 but believes that, with the support of an IVA, he can repay the majority of the debts owed to his creditors within five years.

He was given your details by your colleagues in the audit department of your firm who have been auditing James' business accounts for the previous four years.

Requirement;

State whether you can accept the appointment as supervisor of James' IVA. Would your answer differ if the audit work had been undertaken five years ago?

2 marks

14. Who may be summoned by the Official Receiver ("OR") to appear before the court for a private examination?

2 marks

15. Within what time periods must a supervisor of an IVA send a progress report and to whom?

2 marks

16. An Insolvency Practitioner must have security in place before they can accept formal insolvency appointments. According to the Insolvency Practitioners Regulations 2005, what is the level of the bond required and what is its purpose?

4 marks

17. Janet Snoxhall is subject to a consumer protocol IVA which has another two years remaining and is based upon her making monthly contributions from her income for a period of 60 months. Janet has recently received notification from her employer that she will be made redundant at the end of next month.

Requirement:

Under the IVA protocol what must Janet now do?

4 marks

18. You were appointed trustee in bankruptcy of Bert Smith six months ago and having completed your initial enquiries you are aware that Bert drives a Jaguar XJS valued at £12,000. Explain whether the vehicle forms part of the bankruptcy estate.

4 marks

19. What is the effect of an interim order ('IO') being granted prior to consideration of an IVA proposal?

4 marks

20. What restrictions are imposed on a debtor who is subject to a Debt Relief Order ("DRO")?

4 marks

PART C

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

21. Your principal has been instructed by Jane Rivers to assist in preparing the documentation to call a meeting of her creditors to consider proposals for an individual voluntary arrangement ('IVA').

Jane has been made aware that as part of her IVA proposal an estimated outcome statement comparing the proposed IVA to the result that would be expected in a bankruptcy scenario will need to be prepared and accordingly she has provided you with the following information;

- Jane is a self-employed solicitor working in her own small practice which deals mainly with family law cases, the majority of which are supported by the Legal Aid Board.
- She is married and has two children aged 6 and 10. She and her husband jointly own their matrimonial home which is a four bedroom property on the outskirts of Cheltenham. The property has been valued in the last six weeks with a market value of £200,000 and is subject to one joint charge of £150,000.
- Jane has advised that she does not want to include the property in the IVA as it is the family home. Instead she has suggested that a relative will provide a cash lump sum of £8,000 (paid in two equal instalments of £4,000) in consideration of this. The first instalment being payable on approval of the IVA, and the second six months thereafter. If the IVA is not approved, or creditors insist on a revaluation of the property in month 54, these funds will not be available.
- Jane's husband has notified you that the deposit on the purchase of the property of £20,000 was funded by him entirely from an inheritance that he received and he has provided paperwork to prove the inheritance was due and paid solely to him. He is claiming the sum of £20,000 in addition to his equitable share.
- Jane holds a 50% interest in a life policy that has a value of £5,000. The joint owner (her husband) will gift their 50% share to the IVA if approved in consideration of this.
- Jane intends to continue trading her practice and has shown that her practice has a number of cases that have been finalised which hold a value of £250,000. Of this sum 75% has already been paid by the Legal Aid Board to fund the cases and there will be a 10% taxation charge to finalise the amount left to be billed.
- From the residual sum Jane proposes to invest 50% in the practice to help keep the practice trading and the other 50% will be paid to the IVA. In addition, income and expenditure forecasts indicate that a sum of £500 per calendar month can be paid and Jane has agreed to pay this for 60 months.
- There are no employee claims as the practice has kept its wages and PAYE/NIC payments up-to-date, however HM Revenue & Customs ("HMRC") are owed the sum of £10,000 in respect of VAT and Jane's own tax returns. HMRC have indicated that they would have to commence bankruptcy proceedings should an IVA not be approved and that their costs of petition would be £1,800.
- Your principal has agreed a nominee's fee of £1,500 excluding VAT and the proposals provide for the supervisor to be remunerated at a fixed rate of £2,000 per annum excluding VAT.

- Trustee's fees are to be calculated on the OR's scale rate and the trustee is expected to accrue disbursements of £1,000 including VAT.
- In a bankruptcy, it is expected that the joint owner would not agree to a buy-out or sale of the matrimonial home and therefore an application for possession and sale would be necessary. The associated fees are estimated to be 1.5% for agent's fees excluding VAT and £5,000 in total for legal fees.
- The IVA is to last for 66 months.
- Known unsecured creditors include £100,000 for loans and credit cards and a friend is owed a further sum of £10,000 which they lent some four years ago and for which they have agreed that they will not claim for in an IVA.

Requirement;

- a) Draft the estimated outcome statement to show the deficiency to creditors and dividend prospects in both IVA and bankruptcy. Show all workings and any assumptions made.

13 marks

- b) A meeting of creditors has been arranged to consider Jane's proposals for an IVA. According to the Rules, what accompanying documents need to be sent to creditors with the notice of the creditors' meeting?

2 marks

Total 15 marks

22. Your principal has been appointed trustee in bankruptcy of Daisy May on 1 September 2015. The bankruptcy order was made on 1 July 2015 following a petition being presented by a creditor on 1 March 2015.

Daisy lives with her partner and their three children aged 14, 17 and 23 in a four bedroom property in a leafy suburb of Leicester. She has advised the OR that she and her partner purchased the property jointly some 15 years ago and it is subject to an outstanding mortgage which is in their joint names. She also advised that the property is subject to a second secured loan but thinks that this was paid off around three years ago.

Daisy's partner has contacted your principal to say that he paid for a conservatory that was added to the property six years ago at a cost of £10,000. He is expecting to be repaid for the cost of the conservatory and wants to get his 'proper share' from the property.

Requirement;

- a) What steps should the trustee take in the first two to three months of their appointment in respect of the above property to confirm;
- i. What interest (if any) the trustee holds in the property; and
 - ii. To protect any interest held

10 Marks

- b) How would the trustee go about realising the beneficial interest in the property?

5 marks

Total 15 marks

PART D

TWO OF THE THREE 15 MARK QUESTIONS TO BE ANSWERED

- 23.** Peter Wells has made an appointment to see you urgently. He has never been in financial difficulty before however due to a misunderstanding with his accountant, he has received notice that HMRC intend to issue a statutory demand in respect of tax owing in the sum of £15,000. He advises you that he accepts that this sum is owing, however, he is not in a position to settle the liability in full at the current time and HMRC have not responded to his requests for additional time for payment due to delays caused by his accountant. Peter is employed part time as an architect however, he also operates a private practice two days a week and it is as a result of this self-employed income that the tax liability has arisen.

You have some brief details of Peter's circumstances and understand that he is married, a home owner and he has three children under the age of 16 living at home with him and his wife.

Requirement;

- a)** Prepare a note to use at the meeting with Peter summarising the main advantages and disadvantages of bankruptcy as compared to the advantages and disadvantages of an IVA.

8 marks

- b)** What assets would be excluded from the bankruptcy should Peter be made bankrupt?

4 marks

- c)** If Peter opts for an IVA and seeks to exclude his share of the matrimonial home from the arrangement, what would the creditors expect to see included in the arrangement?

3 marks

Total 15 marks

- 24.** Georgina and Brett, a married couple, established a specialist sports equipment outlet targeted at elite sportsmen and women in a range of sports but focussed primarily on triathlon events; swimming, cycling and running (Georgina is an accomplished

triathlete), and also on cricket, which is Brett's first love as a former county cricket player. They decided to target the mountaineering market as well. They set up in business as a partnership and traded from a premium retail outlet in Cheltenham. The partnership trades under the style of 'High Achievers'.

High Achievers commenced trading four years ago and whilst the business attracted interest from sports enthusiasts, because of the range and cost of the equipment involved they have always struggled with cash-flow. They invested heavily in fitting out the store to create a premium brand image. However, they have struggled to establish a distinctive, competitive identity in a fiercely competitive market.

The business carried significant amounts of expensive stock, some of which quickly became obsolete due to the speed of innovation, in particular in cycling equipment. The business ran out of cash and came under considerable pressure from creditors.

One significant supplier issued winding-up proceedings against High Achievers and concurrent bankruptcy petitions against both partners. A winding-up order was made against the partnership and bankruptcy orders against the partners. At the request of creditors, your principal has been appointed by the Secretary of State as liquidator of High Achievers and as trustee of the two bankruptcy estates. The Official Receiver ('OR') closed the business immediately following the making of the bankruptcy and winding-up orders and dismissed the remaining staff. Agents were instructed to take control of the store and its contents.

As a result of reviewing the handover documents from the OR and following your first meeting with the bankrupts, you establish the following:

- (a)** The rent for the leasehold trading premises in Cheltenham is £60,000 per annum. The lease was entered into four years ago for a term of ten years of which six years is remaining. There are currently arrears of £15,000 and the landlord has advised you that they will have a dilapidations claim of £30,000 (supported by an agent's schedule). The landlord has been given possession of the premises and has indicated that he expects to be able to re-let the premises in no more than six months and will wish to claim for their future rent until the property is re-let.
- (b)** The agents instructed by the OR took the stock of equipment into safe custody. The book value of this equipment is £75,000 but it is only expected to realise £20,000 at auction. Agent's costs will be 10% of realisations including VAT.
- (c)** A supplier of stock currently held by the agents is claiming retention of title. The supplier is owed £19,000 and the cost of the equipment held by your agents is £8,000 (and was expected to realise £4,000). You have reviewed the retention of title claim and it appears to be valid. The supplier wishes to collect their stock from your agent.
- (d)** All fixtures and fittings paid for by the partnership, at a total cost of £30,000, had to be left at the premises and are not expected to realise anything for the estate.
- (e)** High Achievers have outstanding book debts of £65,000 but two companies with debts due to the partnership totalling £15,000 are subject to insolvency proceedings and the dividend prospects are poor. The remaining book debts are expected to realise 80% of the book value.
- (f)** High Achievers has cash at bank of £2,000.

- (g)** HM Revenue & Customs is owed £23,500 for unpaid VAT and £7,000 for unpaid PAYE/ NIC. In addition, Schedule D assessments have been raised against the partners in the sum of £8,000 for Georgina and £6,000 for Brett.
- (h)** Georgina bought her own car two years ago, a Landrover, which cost £9,000 and is now worth £6,000. She borrowed £5,000 from her parents to help purchase the car and still owes that money to them.
- (i)** Georgina has personal credit card debts of £25,000 and Brett has a personal loan of £12,000 and credit card debts of £30,000.
- (j)** Brett likes his cars and is very proud of his Maserati which he bought six years ago. He is a little coy about the value but your agent has indicated that it is likely to realise about £28,000 at auction. He is claiming that the car is essential for getting to and from work.
- (k)** Brett is also the proud owner of some cricket memorabilia which is worth approximately £10,000 but he is claiming these are personal items and should not be regarded as assets because they are nothing to do with the business.
- (l)** Georgina's bike which she uses for triathlons cost £3,000 and is now worth £2,000. She paid for this from her drawings from the partnership.
- (m)** Your agents have agreed to a fee basis of 10% of realisations (including VAT) of any assets they are instructed to sell.
- (n)** The store had a total of five full and part-time employees. Their wages were paid up to date but they are owed a total of £2,000 in lieu of notice. In addition three of the employees are each owed £1,200 holiday pay. The combined redundancy entitlement is £20,000.
- (o)** Both Georgina and Brett have secured new employment. Georgina's net monthly surplus income has been assessed at £400 and she has agreed to make contributions at this level for a period of three years. You have assessed Brett's monthly surplus income as £300 but he disputes this. However, he does not appear to have valid grounds and you anticipate obtaining an Income Payment Order ("IPO") (if necessary) at the level you have assessed.
- (p)** Georgina and Brett own their house in Cheltenham which is currently worth £350,000 and is subject to a mortgage of £260,000. They are joint tenants having purchased the property together.
- (q)** The business has trade creditors totalling £120,000 (excluding the ROT creditor) and has borrowed £45,000 to assist with cash-flow from an independent source (Smart Lending Limited) which has not taken any security.
- (r)** The petitioning creditor incurred petition costs of £1,500 for each of the partners and £2,000 for High Achievers.
- (s)** The Official Receiver's costs and disbursements, net of the deposits on the petition, are £2,300 for High Achievers and £1,600 for each of the partners.
- (t)** The Secretary Of State fee for Georgina will be £8,000, for Brett will be £15,000 and will be £9,000 for the partnership.
- (u)** The trustee's fees for Georgina will be £6,000, for Brett will be £14,000 and the liquidator's fees for the partnership will be £12,000, all inclusive of VAT.
- (v)** You estimate that you will incur legal costs of £2,400 (including VAT) in connection with claiming Brett's assets and obtaining an Income Payments Order.
- (w)** You also expect to incur agents and legal fees totalling £5,000 (including VAT) in dealing with the sale of the house in Cheltenham.

Requirement:

1. Prepare an Estimated Outcome Statement and dividend forecast for High Achievers and the partners. Please support your answer by clearly stating any assumptions and showing your workings where appropriate.

13 marks

2. What statute governs the formation and legal basis of partnerships and what insolvency legislation governs the insolvent winding-up of a partnership?

2 marks

Total 15 marks

Total 15 marks

- 25.** You were appointed trustee in bankruptcy of Annette Smith four months ago and have convened a meeting of her creditors to seek approval for your fees. The meeting has been set for 10.30am on Tuesday 2 December and by the morning of the meeting the following proofs and proxies had been received;
- i. Fred Little has submitted a claim in the bankruptcy in the sum of £4,000. He has not submitted a proxy.
 - ii. Jeremy Tall has submitted a proxy voting in favour of your remuneration on a time costs basis. He is owed £890 but has not submitted a proof of debt.
 - iii. Sarah Large has submitted a claim for £10,600 and a chairman's proxy with instructions to vote for the resolution.
 - iv. Hervay Limited has submitted a claim for £3,600 with a note that the area sales manager will be attending the creditors' meeting in person.
 - v. Bob Small has faxed a proxy to you voting against the resolution. He had previously submitted a claim in the sum of £4,800.
 - vi. Vicky Wide has lodged a claim in the sum of £230 and has sent in a general chairman's proxy with no instructions.
 - vii. Mitsu Limited submitted a proof of debt in the sum of £14,900 and a proxy voting for the resolution. These were received at 10.45am on the day of the meeting.

Requirement;

- a)** How would you deal with the proofs and proxies received for voting purposes?

7 marks

b) Having obtained a valid resolution for your fees on a time costs basis you send creditors an annual progress report detailing that you have drawn fees of £6,890 on a time costs basis.

- i. What information should you have provided to creditors regarding the fees in the annual report?

5 marks

- ii. What can a creditor do if they are dissatisfied with the level of trustee's remuneration?

3 marks

Total 15 marks