

**INSOLVENCY  
ASSOCIATION**



**PRACTITIONERS**

**CERTIFICATE OF PROFICIENCY IN PERSONAL INSOLVENCY  
ENGLAND & WALES  
Examination 10 June 2016**

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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 2016.

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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**CANDIDATE NUMBER.....**

**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. A supervisor of an individual voluntary arrangement (“IVA”) has obtained a resolution for his fees to be calculated on a time cost basis and estimates that his fees will be £6,500. According to SIP 3.1, what should the supervisor do if his costs have increased beyond the previously reported estimate?
- a) Not draw any further remuneration
  - b) Stop working on the case so further time costs are not incurred
  - c) Report the increase to creditors at the next available opportunity
  - d) Obtain a new resolution from creditors
2. 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) Five weeks
  - b) Six months
  - c) Three months
  - d) For whatever period the office holder deems appropriate
3. What does SIP 12 deal with?
- a) Individual voluntary arrangements
  - b) The handling of funds in formal insolvency procedures
  - c) Proxy forms
  - d) Records of meetings in formal insolvency proceedings
4. In order for an IVA to be approved, what value of creditors is required to vote in favour of the IVA?
- a) Three quarters (by value) of the votes cast at the creditors’ meeting
  - b) A simple majority (by value) of the votes cast at the creditors’ meeting
  - c) Three quarters (by number) of the unsecured creditors given notice of the meeting
  - d) A simple majority (in number) of the unsecured creditors given notice of the meeting

5. Which of the following is permissible as a disbursement according to SIP 9?
- a) A charge calculated as a percentage of remuneration
  - b) Recovery of basic overhead costs such as office equipment rental, depreciation and finance charges
  - c) An administration fee or charge additional to an office holder's remuneration
  - d) Payment to a third party in respect of expenditure directly referable to the appointment
6. A trustee in bankruptcy requires sanction to exercise which of the following powers?
- a) Operate a local bank account
  - b) Carry on the bankrupt's business
  - c) Demand supplies of electricity
  - d) Distribute assets in specie
7. 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
8. For how long will a debt relief order ("DRO") last for?
- a) Three months
  - b) 12 months
  - c) Until the creditors are paid in full
  - d) Until the Official Receiver("OR") releases the debtor
9. In a bankruptcy, where must notice of the final meeting be advertised?
- a) There is no requirement to advertise
  - b) The Gazette and one newspaper in the relevant locality
  - c) The Insolvency Service website
  - d) The Gazette
10. In order for a creditor to present a bankruptcy petition the debt must equal to or exceed the bankruptcy level. What is the bankruptcy level?
- a) £2,500
  - b) £750

- c) £500
- d) £5,000

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**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. You are an insolvency practitioner (“IP”) and in the course of administering the bankruptcy of Bob Young you become aware that your joint trustee is not complying with the relevant laws and regulations and you consider that their actions discredit the profession. To whom are you required to report your concerns to in accordance with SIP 1?

**2 marks**

12. If a trustee in bankruptcy wishes to reject a creditor’s proof of debt what should they do?

**½ mark per point up to 2 marks**

13. List four people who may be required to attend a private examination under Section 366 IA86?

**½ mark per point up to 2 marks**

14. Chris Smith is intending to put forward a proposal for an IVA and you have agreed to assist him with the drafting of the proposal and act as the nominee.

Chris was referred to you by his accountant and you have agreed to pay them the sum of £850 for putting together the financial information necessary for preparing the proposal.

**Requirement;**

What details, if any, are required to be disclosed in the proposals in respect of the work completed by the accountant and any payment made to them?

**½ mark per point up to 2 marks**

15. Alison is 58, a home owner and is currently employed as a nurse.

Other than owing £18,500 to HM Revenue & Customs she has no other creditors.

In addition to her home she also owns three buy to let properties which are all rented out. The rent covers the mortgage payments in full.

**Requirement;**

State two reasons why the IVA protocol would not be deemed suitable if she were to seek to enter into a voluntary arrangement

**2 marks**

16. Barry Hargreaves is a self-employed electrician who, following a car accident, has been forced to take eight months off work.

He currently has unsecured debts of £38,625 however Barry has just signed a lucrative contract to provide electrical services to a local property developer and is keen to sort out his financial affairs.

A proposal for an IVA has been put to Mr Hargreaves' creditors and a meeting has been convened to consider his proposal.

**Requirement;**

Adjudicate on the following proxy forms submitted for the forthcoming meeting, stating your reasons as to whether you should admit the claim and for what amount for voting purposes.

i. Alison Hughes Limited is owed the sum of £8,200 for materials supplied to Barry over the previous 12 months.

She has advised you verbally that £2,650 of the materials are subject to an all monies retention of title ("ROT") claim which she has been advised by her solicitor is valid.

She has submitted a proxy form voting in favour of the proposal but has not submitted a proof of debt form.

ii. Phil Bowles is a sub-contractor who regularly works for Barry.

He has submitted a proof of debt form in the sum of £679 however he has not submitted a proxy form.

In discussions with you he has indicated that he is not in favour of the proposal.

- iii. Stover Limited submitted a proxy form voting in favour of the proposal and a proof of debt in the sum of £314. Both documents were submitted by fax.
- iv. Rawplugs Limited has submitted a proof of debt form in the sum of £4,800. They also submitted a proxy form directing the chairman to vote in favour of the proposal but with a modification capping the supervisor's fees at £5,000.

**4 marks**

17. What criteria must to be met in order for an individual to be eligible for a DRO?

**½ mark per point up to 4 marks**

18. State what matters constitute a breach of a protocol compliant IVA, according to the protocol.

**½ mark per point up to 4 marks**

19. Your principle was recently appointed trustee in bankruptcy of Sam Smith who operated a garden machinery repair business. Following your appointment you took steps to realise the assets of the business.

In accordance with SIP 7 and good practise, how would the following transactions be reported in your receipts and payments?

- i. Plant and machinery has been sold by your agents in the sum of £18,750 (including VAT). After deducting his charges of £1,860 (including VAT) the agent sent you a cheque for £16,890.
- ii. Stock with a value (at cost) of £22,750 was returned to suppliers with valid ROT claims. You have also paid the sum of £4,590 to another supplier in order to secure title to the stock supplied by him.
- iii. You have paid rent to the landlord of the trading property of which £11,000 was in respect of rent arrears and £3,500 was in respect of rent for the period of your occupation.

- iv. Amounts totalling £7,660 were received from the redundancy fund under the employment protection legislation and were distributed to former employees. You received a fee of £930 plus VAT for your work as the employer's representative.

**Total 4 marks**

20. Mr Cliff Fields was employed for a number of years as a stockbroker, enjoying a lifestyle of foreign holidays and luxury cars.

Much of his expenditure was on credit which he had planned to clear at the end of each year when he received his bonus.

Unfortunately, Mr Fields was made redundant three years ago but he has continued to rely heavily on credit to fund his lavish lifestyle until he found alternative employment.

Mr Fields has now secured a new role but his salary is significantly lower than at his previous job. Despite selling his house to pay off some of his debts, he is struggling to meet his liabilities as they fall due.

**Requirement;**

Outline the steps Mr Field should take in order to declare himself bankrupt.

**½ mark per point up to 4 marks**

## **PART C**

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

21. Ivor Redbill has approached your firm for assistance with an IVA and your principle has asked you to assist with preparing an estimated outcome statement, comparing the outcome between the proposed IVA and bankruptcy.

You have been provided with the following information;

Mr Redbill has traded as a self-employed plumber for the last 22 years. At the height of the business he employed a team of twelve plumbers. However in recent years demand has dropped off and he now works on his own concentrating mainly on domestic repairs.

Mr Redbill has unsecured debts of £184,000 arising both from the business and from personal expenditure.

In addition to the above, Mr Redbill also owes £508 to one of his key suppliers. He has made it clear that he does not want this supplier to be included in the IVA as he believes it will be difficult for him to source the stock that he requires to continue trading.

Mr Redbill is married and has two grown up children who have now both left home. He lives with his wife in the house they purchased jointly shortly after they got married which has been extended and improved by Mr Redbill.

The couple have placed the property on the housing market with an asking price of £325,000 and estimate that the costs relating to the sale will comprise of estate agents' fees of 1.25% of the sale price achieved and solicitors' fees of £2,000.

The current mortgage stands at £52,000 and you understand that Mrs Redbill intends to use her half of her sale proceeds to set up a trust fund for her grand-children.

Mr Redbill has advised that he is happy for his half of the proceeds to be offered to his creditors in the IVA.

Mr Redbill has a motor vehicle, a Ford Mondeo, which is subject to a hire purchase ("HP") agreement on which there would be a shortfall of £1,600 if the vehicle were to be sold.

The HP company have made it clear that under the terms of the HP agreement they will repossess the car if Mr Redbill were to enter into bankruptcy and Mr Redbill has confirmed that his wife will maintain the HP payments during the term of the IVA.

Mr Redbill also has a van which he uses for his plumbing business which he considers is essential for his employment. The van is owned outright by Mr Redbill who estimates it is worth £3,500.

His only other assets are 164 shares in Aviva which have a market value of £5 per share and an ISA with Standard Life with a total value of £90. Mr Redbill is also owed £400 by Southern Electric. He does not want to include any of these assets in the IVA.

Mr Redbill currently has a monthly surplus income of £1,500 and intends to retire in two years' time. Whilst he does have a small pension, Mr Redbill estimates that once retired he will not have any surplus income. He has made it clear that, should he be declared bankrupt, he will cease trading immediately.

In preparing the comparison, you should assume the following;

**IVA expenses**

Your firm's standard nominee fee is £2,400

Your firm normally charges a flat fee of £1,000 per year to supervise an IVA.

**Bankruptcy expenses**

Bankruptcy petition costs are expected to be £1,105

Trustee's fees should be calculated using the OR's realisation fee scale only.

Solicitor's fees are expected to be in the region of £1,000

Assume out of pocket expenses (to include Insolvency Service banking fees) of £350

**Requirement;**

Prepare an estimated outcome statement comparing the outcome between the proposed IVA and bankruptcy. Show all workings and assumptions made.

**Total 15 Marks**

- 22.** A new principal has recently joined your firm and they have received their first ever bankruptcy appointment where the main asset is a property.

The principal has only ever previously worked on corporate assignments and has asked you to assist with the case.

**Requirement;**

Write a memorandum to the principal outlining;

- i.** The 'three year' rule and S238A of IR86.  
**½ mark per point up to 2 marks**
- ii.** The options available to the trustee for dealing with the property  
**½ mark per point up to 5 marks**
- iii.** What matters the Court will consider when making an order for the possession and sale of a property  
**½ mark per point up to 3 marks**
- iv.** What practical steps should be taken by the trustee on appointment with regards to the property  
**½ mark per point up to 5 marks**

**Total 15 marks**

## **PART D**

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

23. You have been asked by your principal to sit in on a meeting with an individual who is seeking some advice on his financial situation.

At the meeting you establish the following;

Mr Advent ("the debtor") is a 51 year old criminal barrister who has worked from Chambers in Townsville for the past 20 years. He is self-employed and pays an annual fee to the Chambers of £20,000.

Mr Advent's payments to the Chambers are up to date however he is due to make his next annual payment in six months' time. Failure to make the annual payment would result in him being asked to find alternative arrangements at a different Chambers. Mr Advent believes that it is unlikely he would be able to secure a different Chambers.

Mr Advent has been extremely successful over his career and his annual income totalled approximately £165,000 per annum. This income has halved in recent years and Mr Advent has started to tour the lecture circuit to increase his revenue.

Mr Advent has been married to his second wife for the past 3 years. They live in a jointly owned property valued at £1,000,000, with an outstanding mortgage of £325,000. Mr Advent has paid for £200,000 of home improvements on the property, funded by a secured loan in his sole name. On 1 January 2015, for reasons unbeknown, he transferred 25% of his share of the equity in the property to his wife.

Mr Advent divorced his first wife seven years ago, with the former matrimonial home being transferred to his first wife in full and final settlement of their divorce, on 1 November 2009.

The debtor owns a Mercedes E Class with an estimated value of £32,000 which Mr Advent is keen to keep in order to save face with his neighbours.

In addition to this, his wife owns a Fiat 500 with a value of approximately £3,000, which is used solely by his wife and is believed that she pays for the upkeep of the vehicle.

Mr Advent holds three life insurance policies and a pension policy. One of the life insurance policies matures upon the death of Mr Advent and has no surrender value. A second policy has a surrender value of £10,000 and matures in 2018, when it will pay out £40,000. The third policy has a £6,000 surrender value and does not mature for fourteen years. The current value of Mr Advent's pension is £2,200,000.

The debtor solely owns an investment property which has a value of £500,000 and an outstanding mortgage of £470,000. He has a friend that stays in the property who would be keen to purchase his interest in the property for £22,000.

Mr Advent is awaiting a payment in respect of his legal work of approximately £400,000. Due to some problems with the processing of paperwork, he does not anticipate that he will receive these funds for another four months.

The debtor has failed to make provisions for PAYE and National Insurance and has recently employed an accountant to complete his tax returns and calculate his liabilities. He has been informed that he owes HM Revenue & Customs (“HMRC”) £230,000, which includes interest and penalties. The accountant is owed £25,000 for the completion of the returns. HMRC have written to Mr Advent threatening bankruptcy proceedings if he does not pay the amount owed.

Mr Advent has no savings and is unable to pay HMRC.

Mr Advent has an unsecured loan with his bank of £50,000 which he used to pay for extravagant holidays. His wife has no idea of his financial position and in order to keep up the lifestyle they were accustomed to, the debtor has incurred credit card debts of £165,000.

**Requirement;**

Prepare a memorandum for your principal listing the options available to Mr Advent (consider both statutory and non-statutory solutions).

Provide brief explanations as to why each solution is considered to be suitable given Mr Advent’s particular circumstances, or not, and outline any further information that you may require to confirm the suitability of an option.

Identify clearly what you would consider to be the most appropriate option for this debtor. (Note: ‘Do Nothing’ is not considered as an option).

**Total 15 marks**

24. a) During the course of an IVA the role of an IP changes three times from the initial meeting with the debtor. What are these and what are their roles?

**3 marks**

- b) Sarah Harris entered into an IVA with her creditors three years' ago paying the sum of £185 per month into her arrangement for a five year term. As the supervisor of the IVA you have recently been approached by a third party who wishes to offer Sarah's creditors a lump sum in full and final settlement of her obligations under the terms of the accepted proposal.

**Requirement;**

As the supervisor of the arrangement what should you now do?

**½ mark per point up to 3 marks**

- c) You have recently become aware that Sarah has not complying with the terms of her IVA leaving you with no other alternative but to fail the voluntary arrangement. As the supervisor what should you do and what will happen to the assets of the arrangement?

**½ mark per point up to 9 marks**

**Total 15 marks**

- 25.** Kate James was declared bankrupt on 23 February 2016 following the presentation of a petition dated 02 January 2016 and your principal was subsequently appointed trustee of her estate. Despite numerous letters to Kate from the trustee asking for information regarding her affairs she has not surrendered to the proceedings.

**Requirement;**

- a) What duties does Kate have to provide information and documentation to her trustee?  
**4 marks**

- b) Outline the powers of the trustee to obtain information regarding Kate's estate.

**7 marks**

- c) Having obtained relevant information regarding Kate's estate the trustee becomes aware of the following;

- i. Kate has a dining table and chairs which she inherited from her mother 15 years ago which has been in the family for three generations. For insurance purposes the table is valued at £12,500.
- ii. Kate is employed full time as a university lecturer and earns £37,000 a year. Having completed an income and expenditure statement it would appear that she has surplus monthly income of £225.

**Requirement;**

Explain how the trustee would deal with these two matters.

**4 marks**

**Total 15 marks**