



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

Examination 10 June 2016

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 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 (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).

Copyright Notice

This examination paper and materials relating to it are copyright of the Insolvency Practitioners Association. No part may be reproduced in any material form except as may be authorised by law or with our consent in writing. All rights are reserved

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 What form containing the trust deed protection proposals is issued to creditors?
- a) Form 1B
 - b) Form 2
 - c) Form 3
 - d) Form 4
2. Where there has been a connected party sale in an administration, a SIP 16 Statement should be provided with the first notification to creditors and in any event within how many days of the transaction?
- a) Within seven calendar days of the transaction
 - b) Within seven calendar days of the administrator's appointment
 - c) Within five calendar days of the transaction
 - d) Within five weeks of the administrator's appointment
3. What does SIP 12 deal with?
- a) Acquisition of assets of insolvent companies by directors
 - b) The handling of funds in formal insolvency procedures
 - c) Disqualification of directors
 - d) Records of meetings in formal insolvency proceedings
4. In order for a company voluntary arrangement ("CVA") to be approved, what value of creditors is required to vote in favour of the CVA?
- 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. In a court winding up (where no provisional liquidator has been appointed) what is the 'relevant date' for calculation of preferential creditor claims?
- a) The date of the presentation of the petition to wind up
 - b) The date of the winding up order
 - c) The date of the appointment of an insolvency practitioner as liquidator
 - d) The date the debt is incurred
6. Which of the following is not required to be notified of the trustee's decision to grant a payment break for a debtor contribution order ("DCO")?
- a) The debtor
 - b) The Accountant in Bankruptcy
 - c) A third party required to make a payment under the terms of a DCO
 - d) Creditors
7. Within how many days of the anniversary of a liquidation does the liquidator have to file Form 4.68 with the Registrar of Companies?
- a) 14 days
 - b) 21 days
 - c) 28 days
 - d) 30 days
8. What is the minimum level that a monthly DCO can be set?
- a) £50
 - b) Zero
 - c) £100
 - d) £75
9. In a court liquidation 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

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. What is a prescribed part and how is it calculated?

½ mark per point up to 2 marks

12. If a liquidator wishes to reject a creditor's proof of debt what should they do?

½ mark per point up to 2 marks

13. In a bankruptcy who can request that the trustee applies to the sheriff for the public examination of the debtor?

½ mark per point up to 2 marks

14. What are the two main types of retention of title ("ROT") clause and outline briefly the main characteristics of the two clauses.

2 marks

15. Detail two actions the secured creditor is prohibited from doing after agreeing that the property is excluded from the trust deed estate.

1 mark per point up to 2 marks

16. SIP 16 sets out a number of marketing essentials with which a company should conform when seeking to market a business for sale. List four of these marketing essentials and explain what is meant by them.

½ mark per point up to 4 marks

17. In a trust deed when, and on what grounds, can a creditor petition for a debtor's sequestration?

4 marks

18. Set out what claims an employee may make in an insolvent liquidation, detailing which claims may be made preferentially and which claims will be unsecured.

½ mark per point up to 4 marks

19. Identify the particular threats under the Code of Ethics which may need to be considered in the following circumstances;

- i. An insolvency practitioner ("IP") is investigating a potential preference with a view to making a substantial claim against the insolvent company's director. The director is continually making threats to the IP and claims he will report the IP to his regulatory body for alleged technical failures in dealing with the insolvency.

2 marks

- ii. An IP has been instructed to assist in placing a company into creditors' voluntary liquidation ("CVL"). The IP's husband owns a business which will have a large claim in the liquidation though the debt is disputed by the director.

2 marks

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 a Protected Trust Deed ("PTD") and your principal has asked you to assist with preparing an estimated outcome statement, comparing the outcome between the proposed PTD and the outcome that would be achieved should Mr Redbill be sequestrated.

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 £242,000 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 PTD 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 left home. He lives with his wife in the home they purchased jointly shortly after they 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 estate agents' fees of 1.25% of the sale price achieved and solicitor's fees of £2,000.

The current mortgage stands at £152,000. You understand that Mrs Redbill intends to use her half of the sale proceeds to set up a trust fund for her grand-children.

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 has made it clear that under the terms of the HP agreement they will repossess the car if Mr Redbill were to be sequestrated. Mr Redbill has confirmed that his wife will maintain the HP payments during the term of the PTD.

Mr Redbill also has a van which he uses for his plumbing business and which he considers is essential for his employment. The van is owned outright and Mr. Redbill 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 Scottish Hydro. He does not want to include any of these assets in the PTD.

Having assessed Mr Redbill's income using the common financial tool he currently has monthly surplus income of £572. He intends to retire in four 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 sequestrated, he will cease trading immediately.

In preparing the comparison, you should assume the following:

Mr Redbill is not VAT registered

PTD expenses

Trustee's fixed administration fee £2,500

Trustee's % fee for realisation of moveable assets – 10%

Trustee's % fee for realisation of heritage – 5%

Trustee's % fee for realisation of contributions – 20%

Normal statutory fees apply

Bankruptcy expenses

Petitioning creditor's costs are expected to be £1,105

Trustee's time costs are estimated at £6,800

Normal statutory fees apply

Requirement;

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

Total 15 marks

- 22.** The director of Radio Limited (“the Company”) has attended your office to seek assistance with placing the Company into CVL. He advises you that a winding up petition was presented to Court on 1 February 2016, and a copy was served on the Company on 5 February 2016. A petition hearing has been set for 7 April 2016.

The director is concerned about certain recent transactions and has advised of the following;

- He has been repaying himself £5,000 per month in respect of an overdrawn director’s loan account on the 2nd of each month beginning in December 2015; and
- On 15 February 2016, the Company sold a vehicle for £10,000 to the director’s wife’s company, Stereo Limited. No valuation was obtained.

Requirement;

- a) Set out, in a note to the director, any claims you believe a liquidator might be able to pursue if the Company enters liquidation, voluntary or otherwise.

½ mark per point up to 12 marks

- b) At the winding up hearing, what possible actions might the judge make?

½ mark per point up to 3 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 it 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, given Mr Advent’s particular circumstances, is considered to be suitable 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.** Frank Steiner established his property renovation company 18 years ago. Having successfully traded for a number of years, Frank is now looking to retire and wind the company up. He approaches your principal for advice on how to achieve this.

Requirement;

- a)** Assuming that the company is solvent set out, in a letter to Frank, the steps that he and his fellow directors should take to place the company into Members' Voluntary Liquidation ("MVL").

½ mark per point up to 8 marks

The company proceeds into MVL but after six months the liquidator forms the opinion that the company's assets will be insufficient to pay the company's debts in full.

Requirement;

- b)** Set out the liquidator's duties in this situation with regard to placing the company into CVL.

½ mark per point up to 7 marks

Total 15 marks

- 25.** Bob Goatee is a director of Total Hair Products Limited (“the Company”) which he set up five years ago to produce hair products specifically for the male market.

The Company initially traded profitably concentrating on grooming products for beards which coincided nicely with the growth in this market.

Twelve months ago he was involved in a Court case with a competitor who accused Bob of stealing his designs for a new range of products. Bob won the Court case however the whole matter has had a negative impact on the business, having taken significant amounts of Bob’s time away from the business and incurring significant legal costs.

Bob is confident that with a small amount of restructuring the Company can return to profitability. However, a winding up petition has been presented by HM Revenue & Customs which the Company is unable to settle and the accountant is disputing.

Bob has contacted you for some advice, in particular in relation to administrations, which he has heard may avoid the winding up of his company.

Requirement;

- i. Explain to Bob what the objectives of administration are.

½ mark per point up to 4 marks

- ii. Outline to Bob who may take steps to appoint an administrator and under what Paragraph number of SchB1 IA86;

½ mark per point up to 3 marks

- iii. Outline the steps and considerations which should be taken by Bob and his fellow directors to place the Company into administration via an out of Court appointment.

½ mark per point up to 8 marks

Total 15 marks