



**INSOLVENCY PRACTITIONERS ASSOCIATION
CERTIFICATE OF PROFICIENCY IN PERSONAL 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 'the 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. 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. 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

3. In order for an individual creditor to present a bankruptcy petition the debt must be equal to or exceed what sum?
 - a) £1,500
 - b) £2,500
 - c) £3,000
 - d) £5,000

4. What is the minimum period of time for which contributions should be paid in a protected trust deed?
 - a) 12 months
 - b) 24 months
 - c) 36 months
 - d) 48 months

5. What is the maximum term of a payment break in relation to a DCO?
- a) 2 months
 - b) 6 months
 - c) 8 months
 - d) 12 months
6. What does SIP 12 deal with?
- a) Trust deeds
 - b) The handling of funds in formal insolvency procedures
 - c) Proxy forms
 - d) Records of meetings in formal insolvency proceedings
7. Who does not need to be advised of an application to the DAS administrator for a variation of a debt payment plan?
- a) The payment distributor
 - b) The debtor's employer
 - c) The debtor
 - d) The continuing money adviser
8. When adjudicating on claims in a protected trust deed what does the accountant in bankruptcy consider to be an acceptable tolerance for accepting claims compared to the documentary evidence provided?
- a) 10%
 - b) 15%
 - c) £100
 - d) £500
9. After what period will the accountant in bankruptcy pay over any unclaimed dividends, deposited with him, to the Secretary of State?
- a) 4 years
 - b) 5 years
 - c) 7 years
 - d) 10 years
10. Within what timescale must a trustee in a creditor's petition bankruptcy send to the accountant in bankruptcy his initial proposals regarding the level of the debtor's contribution order?
- a) 4 weeks
 - b) 6 weeks
 - c) 12 weeks
 - d) 16 weeks

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. On what grounds can a trustee in a trust deed petition for a debtor's sequestration?

2 marks

12. When adjudicating on claims what information must the trustee record in the sederunt book?

½ mark per point up to 2 marks

13. What must a sheriff have regard to when considering an application by a trustee under a trust deed for authority to dispose of the debtor's interest in a family home?

½ mark per point up to 2 marks

14. Who can request that the trustee applies to the sheriff for a public examination of the debtor and what is the timescale for the application to the Court?

½ mark per point up to 2 marks

15. When should a dividend be paid in a protected trust deed?

2 marks

16. An insolvency practitioner ("IP") must have security in place before they can accept formal insolvency appointments. According to the IP Regs 2005 what is the level of the bond required and what is its purpose?

1 mark per point up to 4 marks

17. What fair and reasonable criteria must the DAS administrator consider when deciding on whether to approve or reject a debt payment plan (“DPP”)?

½ mark per point up to 4 marks

18. Confirm the effects on action by creditors of a moratorium on diligence.

1 mark per point up to 4 marks

19. An application for the sequestration of a living debtor’s estate may not be made unless the debtor has received what advice from a money adviser?

1 mark per point up to 4 marks

20. You are dealing with the sequestration of a debtor and despite your best efforts you have been unable to trace him. Prepare a file note for the trustee explaining the process to be followed to defer the debtor’s discharge.

½ mark per point up to 4 marks

PART C

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

21. A partner at your firm is trustee in the sequestration of Andrew Goodchild trading as Diamonds Galore Jewellery & Design. The warrant to cite was the 31 October 2014 and the sheriff at Dumbarton awarded sequestration and appointed the partner as trustee on 15 December 2014. There are sufficient funds available to pay a dividend and all known creditors have lodged claims.

The following creditors' claims require adjudication before the dividend can be paid:

1. Jewellery Essentials Ltd ("JEL") made supplies to Andrew in January 2009. Andrew claims not to have received delivery of the stock. As he had heard nothing from them since August 2009 he had assumed they had accepted he was not due to pay them anything. JEL has submitted a claim for £4,500.
2. A claim has been submitted by a supplier owed £22,000. The supplier had credit insurance and received £18,000 from the insurance company following the sequestration. The insurance company have also submitted a claim for £22,000.
3. A supplier has submitted a claim for £12,000 including VAT. The supplier has also claimed VAT bad debt relief.
4. Andrew's estranged wife has a court order for ongoing aliment and has lodged a claim for outstanding sums due for the 6 months' period, 1 August 2014 to 31 January 2015. The claim is for £3,600.
5. Andrew was previously a partner in the Design Group Partnership which ceased to trade in January 2013 and was subsequently sequestrated. Sparkles Limited had a claim of £5,475 against the partnership and received a dividend of 10p in the £ from the sequestrated estate of the Design Group Partnership. Sparkles Limited have lodged a claim against Andrew for £5,475.
6. A French creditor has submitted a claim for 2,500 Euros. Relevant exchange rates are as follows:
 - The date of the purchase of the goods supplied £1 = 1.18 Euros
 - The date of the warrant to cite £1 = 1.23 Euros
 - The date of the award of sequestration £1 = 1.20 Euros
 - Today's date £1 = 1.48 Euros
7. Clasps Limited has submitted a claim totalling £21,000 subject to a trade discount of 5% on invoices due for payment on 16 December 2014. A further early settlement discount of 2.5% is available should payment be received by 3 November 2014.
8. The Chinese treasury department have submitted a claim for tax due in the sum of £14,270.

Requirement;

Prepare a memorandum to the trustee setting out:

- i. The adjudication of each of the above claims and the basis for your decision. **9 marks**
- ii. The order of priority for the distribution of funds in a sequestration **4 marks**
- iii. The rate of interest applied to debts assuming there is sufficient funds to pay creditors in full **2 marks**

Total 15 marks

22. 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

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 HM Revenue & Customs (“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;

- i.** Prepare a note to use at the meeting with Peter summarising the main advantages and disadvantages of sequestration, DAS and a trust deed.
12 marks

- ii.** What assets would be excluded from vesting in a trustee in a sequestration?
3 marks

Total 15 marks

24.

- a)** What information is the trustee obliged to provide to a debtor before they sign a trust deed?

½ mark per point up to 5 marks

- b)** In what circumstances might the accountant in bankruptcy refuse to register a debtor's discharge in a protected trust deed?

½ mark per point up to 2 marks

- c)** What documents must a trustee under a protected trust deed retain for a period of 12 months after their discharge?

8 marks

Total 15 marks

25. You were appointed trustee of the sequestrated estate of Annette Smith on 1 December 2015. You have interviewed the debtor and, based on the information available; do not consider that there would be any benefit in calling a statutory meeting of creditors.

- i. Detail the process for notifying creditors of your decision and explain what would happen if a creditor requests that you do hold a statutory meeting.

9 marks

- ii. Explain the statutory duties of the trustee at the meeting.

6 marks

Total 15 marks