



INSOLVENCY PRACTITIONERS ASSOCIATION

CERTIFICATE OF PROFICIENCY IN PERSONAL INSOLVENCY ENGLAND & WALES

Examination 2 December 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 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 a debtor to qualify for a debt relief order what is the maximum property value they must not exceed?
- a) £300
- b) £400
- c) £500
- d) £1,000
2. Pursuant to Section 238A of the Act, within how many years must a trustee deal with the bankrupt's interest in the matrimonial home before it re-vests in the bankrupt?
- a) 1 year
- b) 2 years
- c) 3 years
- d) 5 years
3. Which one of the following statements is not true in respect of an annulment of a bankruptcy order?
- a) Only the bankrupt can apply for their annulment
- b) Only the trustee can apply for a bankrupt's annulment
- c) Only a creditor can apply for a bankrupt's annulment
- d) Anyone can apply for an annulment
4. Which Section of the Act outlines the actions that may be taken in relation to restrictions on dispositions of property?
- a) Section 284
- b) Section 340
- a) Section 423
- b) Section 343
5. Which one of the following statements in relation to a supervisor of an IVA is not true?
- a) A supervisor may apply to Court for directions on any matter
- b) A supervisor may only apply to Court for directions where an interim order was first obtained
- c) The Court may appoint a person to replace the existing supervisor
- d) The Court may appoint a person to act as a supervisor alongside the existing supervisor

6. Within what timeframe must a trustee in bankruptcy pay a dividend to the unsecured creditors following the notice of intended dividend expiring?
- a) 1 month
 - b) 2 months
 - c) 6 weeks
 - d) 10 weeks
7. Which one of the following cannot make a Court application pursuant to Section 304 of the Act against a trustee for misapplied or retained, or become accountable, for any monies which the bankrupt's estate has suffered a loss as a consequence?
- a) The Official Receiver ("OR")
 - b) The Secretary of State ("SoS")
 - c) The bankrupt
 - d) The bankrupt's spouse
8. You are trustee in bankruptcy and are declaring a dividend to the unsecured creditors. The bankrupt previously traded as a sole trader overseas and several of the creditors' claims are in Euros and US Dollars. The dividend is to be paid in Sterling and you will need to convert these creditors' claims. What exchange rate date should be utilised for the purposes of converting these claims to Sterling?
- a) The exchange rate on the date of the notice of dividend
 - b) The exchange rate on the date of the bankruptcy order
 - c) The exchange rate on the date of the petition
 - d) The exchange rate on the date of the creditors' invoice
9. Within what period may an application be made pursuant to Section 262 of the Act to challenge a creditors' meeting decision in relation to an IVA?
- a) 7 days
 - b) 14 days
 - c) 21 days
 - d) 28 days
10. Within what time period after the end of 12 months from the date of appointment, is a supervisor of an individual voluntary arrangement ("IVA") required to send their annual report to the debtor?
- a) 7 days
 - b) One month
 - c) Two months
 - d) As soon as reasonably practical

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. Other than the creditor's name, address and amount of their claim, what other details should also be included on their proof of debt form?

2 marks

12. You are due to meet a debtor who is considering entering into an IVA. During the course of this meeting, what preliminary advice should be provided to the debtor at this early stage, in accordance with SIP 3.1?

2 marks

13. What effect does an annulment have on a bankruptcy order?

2 marks

14. A partner in a partnership has recently been declared bankrupt. What effect will his bankruptcy have on the partnership, should the Court apply the terms of an Insolvent Partnership Order?

2 marks

15. Give four examples of information or documentary evidence that a Court might require when asked to consider an application by a trustee in bankruptcy for an Order for sale of an interest in a dwelling house.

2 marks

16. When determining the trustee's remuneration, what matters should a creditors' committee have regard to?

4 marks

17. As a trustee in bankruptcy your principle function is to take possession of, realise and distribute the bankrupt's estate.

In carrying out his functions the trustee's conduct must be of the highest standard as an officer of the Court, and also have regard of his duties as trustee.

Requirement:

Prepare a file note outlining the trustee's duties.

4 marks

18. In order for a potential transaction at an undervalue pursuant to Section 339 of the Act recovery action to be successful what main points must be satisfied?

4 marks

19. Your principle has recently secured his first appointment as nominee of an IVA.

The debtor is finalising his proposal for creditor approval, however due to creditor pressure, an application for an Interim Order will be required via the Court before the proposal is agreed.

As part of the debtor's proposal, your principle will be required to deliver his nominee's report to the Court.

Requirement;

Define the key points, pursuant to SIP3.1, that your principal should comment on.

4 marks

20. As part of an Insolvency Practitioner's Code of Ethics he is required to comply with several fundamental principles.

Requirement;

Detail what these principles are and explain how an insolvency practitioner should conduct himself in order to comply with each principle.

4 marks

PART C

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

21. Mr Rob Lloyd is due to attend a meeting at your office later this afternoon. During your initial telephone conversation with Mr Lloyd you gather that he was formerly a director and main shareholder of Gyms Direct Limited (“the Company”).

The Company previously traded in providing home gym equipment. However, following various disagreements with his suppliers, Mr Lloyd was left with little other alternative but to place the Company into CVL with another firm of insolvency practitioners.

Mr Lloyd is also concerned with his personal financial position. Following providing personal guarantees to now dissatisfied suppliers, many creditors are threatening to call upon the personal guarantees and therefore, he is considering the possibility of entering into an IVA.

At the meeting Mr Lloyd arrives in a new Mercedes Benz which you and your principal are slightly surprised about and believe based upon previous knowledge, that the motor vehicle is worth in excess of £50,000.

During the meeting Mr Lloyd also advises that he is currently married and lives with his wife in Cheam with two young children. He believes that the matrimonial home is currently worth approximately £350,000 with a mortgage of £275,000. There is also a second charge registered against the property in respect of one of Mr Lloyd’s business debts for £25,000. Mrs Lloyd is claiming she has no knowledge of this second charge.

It is understood that the liabilities in respect of the personal guarantees are approximately £100,000, and in addition to this Mr Lloyd has run up several credit card liabilities and loans in his personal name totalling approximately £60,000.

From your discussions with Mr Lloyd it is established that he had several very loyal customers which, notwithstanding the disagreements with his suppliers, he could have made the Company a success.

Mr Lloyd believes that he would be able to source alternative suppliers and intends to form a new company and potentially draw an annual salary of £30,000.

Requirement;

Draft an email to your principal detailing the main advantages and disadvantages should Mr Lloyd decide to enter into an IVA compared to bankruptcy proceedings.

Total 15 Marks

22. Your principal has been appointed as trustee in bankruptcy of Alison Jones.

Mrs Jones is 55 years of age and from reviewing the handover papers received from the OR, there is reference to a pension policy with a negligible value.

You have recently written to Mrs Jones' pension provider and received their response advising that Mrs Jones also holds a second pension policy with a fund value of approximately £800,000 that she failed to disclose to the OR.

Requirement;

Outline the issues and the steps you and/or the OR should take to realise this potential asset and the consequences to Mrs Jones?

Total 15 Marks

PART D

TWO OF THE THREE 15 MARK QUESTIONS TO BE ANSWERED ON A SEPARATE SHEET OF ANSWER PAPER

23. While acting as nominee of Mr Barton (“the debtor”), your principle struggled to obtain the required information from the debtor for the purposes of putting forward his IVA proposal to his creditors.

After a considerable amount of work, the debtor’s IVA proposal was approved at a meeting of creditors held on 1 September 2015, and your principal was appointed as the supervisor.

Under the terms of the IVA the debtor was to make voluntary contributions for a total of 60 months at the rate of £300 per calendar month.

In addition to this, the property the debtor currently owns is to be valued in month 48 of the term of the IVA. At this time, his equity interest in the property estimated to be £10,000, would also become available to the IVA.

The nominee’s fee was agreed by the creditors at £800 together with the supervisor’s fee of 15% of the total sum of all the recoveries made.

The creditors totalled £50,000 and there is an estimated distribution to the creditors of 46 pence in the pound.

The IVA proposals incorporated the 2014 standard conditions.

Since the commencement of the IVA the debtor has made seven of the first nine monthly contributions, failing to make the fifth and sixth monthly contributions.

No contribution was received for month ten and although the contribution for month eleven has been received, no further contributions have been received.

Although you have recently written to the debtor as part of the annual review, requesting that he completes and returns an income & expenditure questionnaire to review his financial position, no completed questionnaire has been returned.

You have tried to contact the debtor via other means of communication to discuss matters however, the debtor has failed to respond.

Your principle has asked you to review the current position specifically in relation to the following matters and advise;

- a) What duties does the debtor have to comply with as part of his IVA?

2 marks

- b) Is the IVA in breach and if so, how?

2 marks

c) What steps should be taken by the supervisor if the IVA is in breach, and if any breach is not remedied, what effect would this have?

9 marks

d) What matters as supervisor, should be reported to the creditors in respect of the possible breach?

2 marks

Total 15 marks

24. Brothers, John and Dennis have carried on in a partnership business for a few years, trading as Westlip Fabrications (“Westlip”). They set up the business in 2005 to manufacture and sell small steel frame buildings and also to carry out steel repairs primarily to agricultural buildings. They come from a farming and engineering background and promoted the business as an alternative to working on their parents’ farm, known as West Down Farm.

Westlip trades from a workshop on the farm which is rented from their parents. The brothers and partners, have invested heavily in machinery for the business, initially utilising funds borrowed from their parents but subsequently from funders known as Twin Peaks.

Lately they have struggled with cash-flow and have been unable to pay their trade creditors in accordance with the agreed terms. In addition to this, they have fallen into arrears with HM Revenue & Customs (“HMRC”) resulting in HMRC presenting a petition to wind-up the partnership and also bankruptcy petitions against each of the partners.

Your principal has been appointed as trustee of Westlip and also as trustee of the two bankruptcy estates. The OR took steps to close the business immediately following the making of the bankruptcy and winding-up orders and dismissed the four remaining employees. Agents were instructed to take control of the workshop and all of its contents. Your principal was subsequently appointed by the SoS at the request of the unsecured creditors.

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

- The agents instructed by the OR took the plant & machinery with a book value of £75,000 into safe custody. It is expected to realise only £20,000 at auction. Agents’ costs will be 10% of the total of all realisations, excluding motor vehicles.
- The agents also took possession of all of the stock. One of the suppliers, J Williams, is currently claiming ROT over the stock for which he is owed £17,000. The cost of the stock the supplier is claiming ROT over is valued by your agents at £8,000, the balance of which has been utilised. You have reviewed the ROT claim and it appears to be valid. The supplier wishes to collect their stock from your agent.
- The remaining stock to the value of £18,000 is not subject to ROT, and it is expected to realise £12,000.
- Westlip have outstanding book debts totalling £55,000. It is thought that due to two debtors themselves entering into insolvency proceedings that £15,000 of this total will be uncollectable and dividend prospects look to be poor. The remaining debts are expected to realise 50% of their book value.
- Westlip has cash at bank of £2,000.
- HMRC are owed £19,500 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 £6,000 for John and £8,000 for Dennis.
- The workshop was rented from West Down Farm six years ago on a ten year lease term. The annual rent is £20,000 and is two quarters in arrears. The landlord has given notice of their intention to claim dilapidations totalling £15,000, together with

outstanding rent to the end of the term of the lease. The property is in an isolated location and the landlord believes that the property will be unlettable for at least a year.

- Westlip entered into a formal loan agreement with West Down Farm, to borrow £50,000 unsecured and on favourable terms, when they set up the business and £32,000 remains outstanding.
- John is married and lives in a cottage which he jointly owns with his wife, Anne. They bought the property together six years ago. The property is believed to be worth around £180,000 and is subject to a mortgage of £120,000.
- John also borrowed £4,000 personally from his parents, which he still owes.
- Dennis is single and lives with his parents on the farm to whom he pays rent of £300 a month. There are no arrears. He has run up £22,000 on credit cards and personal loans.
- John has obtained a job offer as a metal worker on a salary of £20,000 and you have reviewed his projected income & expenditure. John has agreed to enter into an Income Payment Agreement for £200 a month for the usual maximum length.
- Dennis utilised the proceeds of a PPI claim of around £22,000 to buy a Range Rover three years ago. He is a little vague about the value but your agents have indicated that it is likely to realise about £18,000 at auction. He is claiming that the car is essential for getting to and from work.
- Your agents' costs will be 8% of the sale proceeds for dealing with any vehicle sales.
- Westlip had four employees who are all due one month's wages. Two of the employees are owed £1,200 each and the other two £700 each. In addition, two of the employees are each owed £500 holiday pay. The total (combined) redundancy entitlement due to all employees is £12,000.
- The business has trade creditors (excluding the supplier J Williams), totalling £80,000. It also borrowed £25,000 to assist with cash-flow from Twin Peaks which has not taken any security.
- The petitioning creditor incurred petition costs of £1,500 for each of the partners and £2,200 for Westlip.
- The OR's costs and disbursements, net of the deposits on the petition, are £2,300 for Westlip and £1,600 for each of the partners.
- The SoS fee for John will be £7,800, for Dennis £5,400 and £11,800 for the partnership.
- The trustee's fees for John will be £8,000, for Dennis £2,500 and £18,000 for the partnership.
- You also expect to incur agents and legal fees totalling £5,000 in dealing with the sale of the trustee's interest in John's cottage.

Requirement;

Prepare an estimated outcome statement and dividend forecast for Westlip and both the bankruptcy estates. Your answer should be supported by clearly stating any assumptions and showing your workings where appropriate. Ignore VAT.

Total 15 marks

- 25.** You have recently been appointed by the SoS as trustee in bankruptcy of Colin Clark following a bankruptcy order being made on 31 August 2016 following a petition being served on the debtor by Haphazard Limited on 16 June 2016.

During a recent meeting of creditors' it became apparent that there are a number of issues to be resolved and you sought to form a creditors' committee.

Requirement;

- a) Set out who may be appointed to act as a committee member and when committee meetings will be held?

4 marks

- b) What are the functions of the creditors' committee?

5 marks

- c) As part of the SoS's application to the Court to apply for a Bankruptcy Restriction Order what matters, as set out in Schedule 4A of the Act, should be taken into consideration on whether an application will be successful?

6 marks

Total 15 marks