



INSOLVENCY PRACTITIONERS ASSOCIATION

CERTIFICATE OF PROFICIENCY IN PERSONAL INSOLVENCY ENGLAND & WALES

Examination 9 June 2017

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 6th April 2017 including the new Insolvency (England & Wales) Rules 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. Within what time limit after an anniversary in an Individual Voluntary Arrangement (“IVA”), should an annual report be sent to creditors?
- a) 1 week
- b) 1 month
- c) 2 months
- d) 3 months
2. For a creditor to present a petition for the bankruptcy of an individual what value of debt must they be owed?
- a) £750
- b) £1,500
- c) £2,500
- d) £5,000
3. What constitutes a quorum in the case of a meeting of creditors? Is it:
- a) At least one creditor entitled to vote
- b) At least two creditors entitled to vote
- c) At least one creditor entitled to vote and the convenor
- d) At least two creditors entitled to vote and the convenor
4. Where a trustee in bankruptcy intends to claw back an item of excess value pursuant to Section 308 IA86 he must serve notice on the bankrupt within how many days from when the item first came to his knowledge?
- a) 7 days
- b) 14 days
- c) 21 days
- d) 42 days
5. Under the new rules, with the consent of the office-holder, creditors with ‘small debts’ do not have to formally prove their debts in order for a dividend to be received. What is the maximum value of a creditor’s debt for it to be treated as ‘small’ in this way?
- a) £500
- b) £750
- c) £1,000
- d) £1,500

6. What percentage of creditors may request the removal of the Official Receiver (“OR”) as trustee in bankruptcy?
- a) 10%
 - b) 15%
 - c) 25%
 - d) 50%
7. At what time on a decision date, other than at a meeting, is a decision treated as being made? Is it:
- a) 08:59
 - b) 12:00
 - c) 17:00
 - d) 23:59
8. Within how many weeks must a first committee meeting be held following the establishment of the committee by a trustee?
- a) Four weeks
 - b) Six weeks
 - c) Eight weeks
 - d) Ten weeks
9. Within what timeframe must a trustee in bankruptcy pay a dividend to unsecured creditors?
- a) 2 months from the last date for proving, as stated in the notice of intended dividend
 - b) 2 months from the date that the creditors received the notice of intended dividend
 - c) 4 months from the last date for proving, as stated in the notice of intended dividend
 - d) 4 months from the date that the creditors received the notice of intended dividend
10. What, if any, is the effect of a creditor not being notified of an IVA?
- a) They are not bound by the IVA
 - b) They are bound by the IVA
 - c) The meeting has to be reconvened
 - d) The IVA is null and void

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. Prior to the Court granting an interim order in an IVA what four conditions must be satisfied?

2 marks

12. What costs must an individual pay when they apply on line for a bankruptcy petition?

2 marks

13. In the eight week period following the issuing of a final report to creditors in a bankruptcy, creditors may do three things. State two of these things.

1 mark per point up to 2 marks

14. In order for a debtor to qualify for a County Court Administration Order what two factors must be satisfied?

1 mark per point up to 2 marks

15. The Insolvency Service has said that, based on case law, an Insolvency Practitioner must exercise professional judgment in respect of a proposed IVA, ensuring what?

½ mark per point up to 2 marks

15. Under Section 315 IA86 a trustee in bankruptcy may disclaim 'onerous property'. Explain what is meant by 'onerous property'?

1 mark per point up to 2 marks

16. Where the office-holder intends to treat a debt as a "small debt" what information should be included on the notice of intended dividend sent to the relevant creditor?

1 mark per point up to 4 marks

17. SIP 7 details certain information which should be disclosed in a receipts and payments account or by way of a note when the payments concerned are to the office holders and their associates. List four of the payments that should be disclosed.

1 mark per point up to 4 marks

18. In accordance with the Rules what debts are not provable in a bankruptcy?

½ mark per point up to 4 marks

19. In order to determine a debtor's Centre of Main Interests ("COMI") for the purposes of whether EC Regulations applies, what key factors are taken into account?

1 mark per point up to 4 marks

20. Michael Atron is a self-employed joiner who was declared bankrupt on the 1 June 2016 following a petition being issued for the sum of £60,000 by one of his suppliers Le Go Blocks Limited.

The petition was issued on the 2 February 2016 and served on him on the 24 March 2016. Mr Atron had been waiting for a large customer to pay their final bill so that he could settle the sum due to Le Go Blocks Limited. On the 26 March 2016 the customer paid Mr Atron £30,000, on the same day he contacted the petitioning creditor's solicitors and paid them £30,000 towards the outstanding sum due to their client.

Requirement;

Your principal has subsequently been appointed trustee in bankruptcy of Mr Atron and asked you to review the payment made to the petitioning creditor's solicitor and whether this is recoverable for the benefit of the estate as a whole.

1 mark per point up to 4 marks

PART C

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

- 21.** At a virtual meeting of creditors convened to approve a debtor's IVA proposal under the new rules, one of the creditors, Mr Ford of Quick Build Services decides to vote against the proposal. Mr Ford is claiming that the debtor must have been fully aware of their financial position for a significant period prior to putting forward their proposal for an IVA and therefore is very upset as the debtor continued to place orders with him in the run-up to today's meeting.

Notwithstanding Mr Ford's rejection to the debtor's proposal, there were sufficient creditors who approved the arrangement however your principal (who is now the supervisor of the IVA) decides it would be prudent to write to Mr Ford setting out the position post approval, and also what he can do if he is still unhappy with the voluntary arrangement.

Requirement;

- a)** Draft a letter to Mr Ford as detailed above.

½ mark per point up to 6 marks

A couple of months into the voluntary arrangement you become aware that the debtor gave materially false and misleading information at the creditors' meeting and therefore your principal has little other alternative but to fail the voluntary arrangement.

Requirement:

- b)** Prepare a file note to the supervisor detailing
- i) the various grounds upon which a voluntary arrangement can be failed,
 - ii) what will happen to the arrangement in the event the debtor is declared bankrupt and
 - iii) the effect this will have on their creditors.

½ mark per point up to 9 marks

Total 15 marks

22. Your principal has been appointed trustee in bankruptcy of Mr Ewing by the Secretary of State on 20 March 2016 following the bankrupt presenting his own petition for bankruptcy on 19 December 2014, when Mr Ewing was due declared bankrupt.

The main asset of the bankrupt's estate is the jointly owned matrimonial home which the bankrupt currently lives in with his wife and their two children.

Although initial dialogue and communication with the bankrupt was satisfactory this has started to deteriorate following your principal (as trustee of his estate) making several attempts to realise his beneficial equity interest in the property for the benefit of the unsecured creditors.

You are aware of Section 283A of IA86 and the three year 'use it or lose it' rule and based upon the lack of assistance your principal is starting to become concerned.

Requirement;

- a) Detail the key practical steps involved in establishing the quantum of the trustee's beneficial equity interest in the property.

½ mark per point up to 4 marks

- b) What are the main options available to the trustee in dealing with his interest in the property and what should he do to avoid the property re-vesting in the bankrupt?

½ mark per point up to 7 marks

- c) If the trustee's beneficial equity interest in the matrimonial home is of no realisable value i.e. is in negative equity, how may a trustee hand-back his interest to the bankrupt if he does not want to wait for the property to re-vest in the bankrupt in accordance with the 'three year' provisions and why might this be advantageous?

1 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 SHEET OF ANSWER PAPER

- 23.** The proposal in an IVA is a contractual agreement between the debtor and his creditors which is approved by the creditors. The parties are free to make whatever provision they see fit within the law and the statutory framework set out within the Act and the Rules.

As part of the proposal a statement of affairs is included providing full details of the debtor's assets and liabilities.

Requirement;

- a)** In this regard detail what matters should a nominee be mindful of and include as part of the statement of affairs when assisting the debtor with preparing his proposal.

½ mark per point up to 6 marks

- b)** Oliver, Luke and Sarah were partners in a boutique shop selling furniture which traded under the name of Nest Egg. Bankruptcy orders were made against all three of the partners on 11 January 2017, the same day as the partnership was also wound-up. Your principle was appointed trustee of the partners and liquidator of the partnership shortly thereafter by the Secretary of State. All realisations have now been made and all that remains is to declare a dividend to the unsecured creditors across the various estates.

However prior to doing so, you have come across the following proof of debts;

- I.** A claim by Knobs & All Limited for £5,000 in respect of door handle knobs supplied.
- II.** A claim by Prime Cars Limited for £48,000 in respect of a Mercedes Benz purchased by Oliver but has been jointly and severally guaranteed by Luke and Sarah.
- III.** A claim by HM Revenue & Customs for £18,000 relating to VAT on furniture sold in the 6 months before the making of the orders.
- IV.** A claim by Wise Trust Bank for £6,000 on a promissory note signed by Sarah but is not due for a further three months.
- V.** A claim by Sarah's husband for £15,000 which he lent to her to clear her personal overdraft.

Requirement;

Advise your principle how he should adjudicate each of these proofs and also in which estate should they rank for dividend purposes.

Total 15 marks

24. In anticipation of the annual report becoming due in the matter of Ivor Redbill in Bankruptcy (“the Bankrupt”), your principle has asked you to prepare a receipts and payments account.

Mr Redbill was declared bankrupt on 22 July 2016 following a HM Revenue & Customs petition, and your principle was appointed as trustee in bankruptcy on 31 July 2016. At the time of the handover from the Official Receiver’s debit balance was £1,785.

From the file you have retrieved the following information;

The Bankrupt lived in his matrimonial property located at 11 Debtors Close (“the Property”) which was held in joint names with his wife. In the statement of affairs the bankrupt’s equity interest in the property at £25,000.

The statement of affairs also identified the following assets and liabilities;

- Cash at bank - £462
- Cash at Building Society - £2,000
- Motor vehicle - £1,100
- Book debts - £3,264
- Banks – (£125,025)
- Other financial institutions – (£3,500)
- Tax – (£66,607)
- VAT – (£53,277)

The Property was sold by mutual consent on 24 November 2016 for £190,000. The costs of sale were as follows;

- Estate agent’s fees - £3,375 including VAT
- Solicitor’s fees - £2,118 including VAT
- Telegraphic transfer fees - £35
- Switch Bank mortgage - £74,482

The solicitors acting in relation to the sale of the Property have forwarded the bankrupt’s 50% of the sale proceeds which have subsequently been paid into the Insolvency Services account.

The motor vehicle was a protected asset and therefore could not be claimed as an asset in the bankruptcy.

One of the Bankrupt’s customers, who owed him £264, has also himself been declared bankrupt.

The Bankrupt has also received a utilities refund of £2,009.

Petition costs of £1,990.

All other assets identified in the statement of affairs have been realised.

In addition the Bankrupt has been paying into an income payment agreement the sum of £180 over the last ten months.

A notice of intended dividend was advertised on 1 February 2016 and the following unsecured claims have been received;

- HM Revenue & Customs - £94,755
- Money Consumer Lending £5,410
- Lloyds Bank credit card - £645

Claims were not received from Mid Bank or Sunshine Bank.

A dividend of 40 pence in the £ was declared on 10 April 2016.

Authority has been obtained from the creditors to draw trustee's fees on a time-cost basis (estimated at £15,000) together with category 1 and 2 disbursements. To date, the sum of £6,960 has been drawn on account of this.

Other expenses incurred and drawn are as follows;

- Bordereau - £564
- EPC certificate - £75
- Land registry searches - £3
- Open cover insurance - £314
- Postage - £20
- Photocopying - £25
- Provision of a meeting room within your offices - £50
- Statutory advertising- £80
- Surveyors fees - £175

Ignore fees payable to the Insolvency Services in respect of BACS and cheque payments.

Requirement:

Prepare a receipts and payments account to be issued to creditors with the trustee's first progress report. Show all workings and assumptions made. Ignore VAT on expenses.

Total 15 marks

- 25.** Your principal has been contacted by Mr Hardman who has asked for some advice on the implications of undertaking a Protocol Compliant IVA, with specific reference as to how his property will be treated.

He currently owns a property worth £250,000 on a repayment mortgage of £220,000.

Requirements;

- a)** Draft a memorandum to your principal setting out how the equity in his property would be dealt with in a Protocol Compliant IVA, setting out the steps which should be taken, what options may be available and what matters should be taken into account in accordance with the proposal and standard conditions.

1 mark per point up to 11 marks

- b)** Mr Hardman also wants to know how a bonus from his employment would be treated and any inheritance he might receive whilst subject to the IVA. Explain (to your principal) how these matters are dealt with in a protocol compliant IVA.

1 mark per point up to 4 marks

Total 15 marks