



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

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 1st January 2017.

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 '1985 Act' are to the Bankruptcy (Scotland) Act 1985 (as amended).

References to the "2016 Act" are to the Bankruptcy (Scotland).

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

CANDIDATE NUMBER.....

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 how many days of registration of a trust deed should the trust deed be issued to creditors?
 - a) Forthwith
 - b) 7 days
 - c) 14 days
 - d) 21 days

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) £3,000

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. How many days does a debtor have to provide additional information to support their bankruptcy application once the accountant in bankruptcy has advised that the application is incomplete?
 - a) 7 days
 - b) 14 days
 - c) 21 days
 - d) 42 days

5. What level of specific penalty is required if for a bankruptcy with assets of £1,000?
 - a) £ 1,000
 - b) £ 3,000
 - c) £ 5,000
 - d) £10,000

6. In a sequestration what level of creditors can apply to have the trustee removed from acting?

- a) 10% of total value
- b) 10% in number
- c) 25% of total value
- d) 25% in number

7. When adjudicating on claims in a protected trust deed the trustee has discretion to accept claims within what tolerance level of the documentary evidence provided?

- a) 5%
- b) 8%
- c) 10%
- d) 12%

8. What level of creditors can insist that the trustee in sequestration applies to the sheriff for a public examination of the debtor?

- a) Majority in number
- b) $\frac{1}{3}$ in value
- c) Majority in value
- d) $\frac{1}{4}$ in value

9. When a Sheriff appoints another person as trustee at a sequestration hearing, the interim trustee must send his/her accounts for intromissions to the accountant in bankruptcy for audit. Within what timescale must the accounts be submitted?

- a) Within 2 weeks of the award date
- b) Within 1 month of the award date
- c) Within 2 months of the award date
- d) Within 3 months of the award date

10. What is the maximum period of time that debts can be paid over in a business DAS?

- a) 3 years
- b) 4 years
- c) 5 years
- d) 10 years

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. How do you establish the date of sequestration?

1 mark per point up to 2 marks

12. How can a commissioner be removed from office?

½ mark per point up to 2 marks

13. When a creditor petitions the court for a debtor's sequestration, within what period must the sequestration petition be heard?

1 mark per point up to 2 marks

14. When is an individual debtor not able to grant a trust deed?

1 mark per point up to 2 marks

15. In a sequestration when is a debtor able to apply for a payment break in respect of the payments due under the debtor contribution order?

1 mark per point up to 2 marks

16. In a 2016 Act sequestration what expenses can the trustee pay at any time?

½ mark per point up to 4 marks

17. What information is recorded in the register of insolvencies?

½ mark per point up to 4 marks

18. 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

- 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.** Who can apply to the Sheriff for the recall of a sequestration and when is it appropriate to do so, on the basis the debtor is able to pay their debts in full?

½ mark per point up to 4 marks

PART C

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

21. You are the case manager dealing with the estate of Jason Bond, who signed his trust deed two days ago. Mr Ford of Quick Build Services has been in contact and is very upset that the debtor continued to place orders with him when he was obviously aware of his worsening financial position.

Mr Ford has never dealt with a customer who has signed a trust deed and he wants to know how Mr Bond can get away with not paying his debts and what he can do to make him pay.

Your principal has asked that you draft Mr Ford a letter summarising the main principles of a trust deed and advising of his rights as a creditor.

Requirement:

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

½ mark per point up to 11 marks

- b) Add a paragraph detailing Mr Ford's rights as a creditor to make the debtor bankrupt now the trust deed process has started.

½ mark per point up to 4 marks

Total marks 15

- 22.** Your principal has been appointed trustee in bankruptcy of Mr Ewing. The relevant date is 10 January 2017.

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

The debtor is ignoring all correspondence you have issued in connection with the property and your principal is keen to ensure things are progressed as soon as possible.

Requirement:

- a)** Detail the key practical steps involved in establishing the quantum of the trustee's financial interest in the property.
½ mark per point up to 4 marks
- b)** Assuming there is equity what are the options available to the trustee to deal with his interest in the property?
½ mark per point up to 10 marks
- c)** If the trustee's 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?
½ mark per point up to 1 mark

Total 15 marks

PART D

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

- 23.** A partner at your firm has been appointed trustee in the partnership of Sofa SoGood Upholsterers. You have limited information from the petitioning creditor which would suggest that the business has ceased trading prior to the award of sequestration.

The creditor advised that when he was last in the business premises there appeared to be considerable stock and work in progress.

On arriving at the site you are met by a rather annoyed landlord who tells you there is arrears of rent and that he is sick of having to deal with creditors arriving at the premises trying to gain access to “their” stock, claiming they have retention of title (“RoT”) – whatever that is!

On entering the premises you establish that there is significant stock of upholstery fabric and various pieces of equipment.

Requirement:

- a)** Explain to the landlord what RoT is and how you intend to deal with any potential claims.

½ mark per point up to 11 marks

- b)** Confirm the landlord’s position as a creditor and what level of preference he may be entitled to.

½ mark per point up to 4 marks

Total 15 marks

24. You have been asked to prepare the second annual receipts & payments account for lodgement with the Commissioners in respect of the sequestration of Ivor Redbill, who was made bankrupt on 4 June 2015.

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 is valued 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 on the market for 4 months and was sold on 24 November 2016 for £190,000. The costs of sale were as follows:

Estate agents fees - £3,375
Home Report - £450
Solicitors fees - £2,118
Telegraphic transfer fees - £35
Switch Bank mortgage - £74,482

The motor vehicle was required by the debtor to travel to and from work.

During the first year of the sequestration you received £875 in respect of book debts, since then you have collected the balance less £264, owed by a customer who has gone bankrupt.

The bankrupt also received a utilities refund of £2,009 on the 8 October 2015.

Petition costs of £1,990 were paid last month.

All other assets identified in the statement of affairs were realised in first year.

The debtor was assessed to pay a monthly debtor contribution order (“DCO”) of £180. Payment commenced on the last date of September 2015. Following a change in circumstances the DCO was reduced to £75 per month, commencing April 2017.

The following claims have been received and a dividend of 40p in the £ was initially expected:

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

Approved fees for the first accounting period were £6,960.

Other expenses during the first year are as follows:

Bordereau - £564

searches - £3

Postage - £20

Photocopying - £25

Provision of a meeting room within your offices - £50

Open cover insurance - £314 – split equally between both years

Requirement:

Prepare the receipts and payments account. Show all workings and assumptions made. Ignore VAT on expenses.

Total 15 marks

- 25.** You have received a telephone call from Anna Downie who is looking for advice on her financial position. She tells you she has not paid her creditors for the last six months and is she is finding it difficult to deal with the constant pressure from her creditors.

You have managed to establish that she is currently employed as a wages clerk for a security company.

She has advised you of the following debts:

Student loans - £18,000

Mortgage arrears - £3,500

Credit cards - £12,000

Bank overdraft - £1,600

Council tax - £3,280

She would like to keep her house and she is adamant that there is no equity in the property. She is a bit vague about her income and tells you she has no spare cash at the end of each month. The local council has threatened her with a bankruptcy petition.

Requirement:

- a)** Based upon the limited information you have been provided by Anna, what would your initial advice be, and why?

½ mark per point up to 5 marks

- b)** You have scheduled a meeting with Anna to discuss her options, what additional information do you require to enable you to consider the potential solutions available and to advise her of all her options?

½ mark per point up to 10 marks

Total 15 marks