



**INSOLVENCY PRACTITIONERS ASSOCIATION
CERTIFICATE OF PROFICIENCY IN PERSONAL INSOLVENCY
SCOTLAND
Examination 8 June 2018**

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 '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).

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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. In a sequestration where a trustee has notified creditors of his decision not to hold a statutory meeting of creditors, how many creditors must request a meeting is held to ensure the statutory meeting is called?
- a) $\frac{1}{3}$ in value of creditors
- b) $\frac{1}{4}$ in value of creditors
- c) $\frac{1}{3}$ in number of creditors
- d) $\frac{1}{4}$ in number of creditors
2. Within what time period must the trustee in a sequestration deal with the matrimonial home to prevent it from re-vesting in the debtor?
- a) 12 months, beginning the date of sequestration
- b) 12 months, beginning the date of the debtor's discharge
- c) 3 years, beginning the date of sequestration
- d) 48 months, beginning the date sequestration
3. What is the maximum period a moratorium on diligence can be in place?
- a) 6 weeks
- b) 12 weeks
- c) 6 months
- d) 1 year
4. Where it is established that the debtor has acquired assets after the trustee's discharge, what is the required minimum value of the assets to enable a trustee to apply for reappointment?
- a) £750
- b) £1,000
- c) £3,000
- d) £5,000
5. When assessing a debtor's income using the Common Financial Tool ("CFT"), what is the maximum monthly sum of money that can be retained towards contingencies?
- a) £10
- b) £20
- c) £40
- d) £50

6. How long does a creditor have to submit their claim once the trustee has given notice inviting claims in a sequestration?
- a) 28 days
 - b) 5 weeks
 - c) 120 days
 - d) 6 months
7. How many creditors must object to the trust deed to ensure the trust deed does not gain protected status?
- a) Majority in value and no fewer than a $\frac{1}{3}$ in number
 - b) 25% in value
 - c) Majority in number and no fewer than a $\frac{1}{3}$ value
 - d) 25% in number
8. In a protected trust deed within what timescale after the final distribution of the trust estate must a trustee apply for his discharge from acceding creditors?
- a) 14 days
 - b) 28 days
 - c) 1 month
 - d) 5 weeks
9. Within what timeframe, from the relevant date, must a transaction have taken place to enable a trustee to bring a gratuitous alienation challenge against an associate of the debtor?
- a) 6 months
 - b) 12 months
 - c) 2 years
 - d) 5 years
10. Which of the following is classed as a postponed debt?
- a) A student loan
 - b) A loan made to the debtor by the debtor's spouse or civil partner
 - c) Outstanding child support, quantified at the date of sequestration
 - d) Employee's claim for holiday pay

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. In a bankruptcy, in what circumstances, and at what intervals, does the trustee require the debtor to provide an up to date account of their finances (state of affairs)?

½ mark per point up to 2 marks

12. When, and to whom, must the Sheriff Clerk send a copy of the award of sequestration when made?

½ mark per point up to 2 marks

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

½ mark per point up to 2 marks

14. What criteria must be met for the Accountant in Bankruptcy ("AiB") to have jurisdiction to determine a debtor's application for sequestration?

1 mark per point up to 2 marks

15. When submitting a claim to the Insolvency Service in respect of Employment Rights Act ("ERA") entitlements, what is the maximum number of weeks an employee can claim in respect of:

- i. Arrears of wages
- ii. Holiday pay

½ mark per point up to 2 marks

16. What information is the trustee required to send to the AiB to register a trust deed as “protected”?

½ mark per point up to 4 marks

17. Who can challenge a transaction as an unfair preference, and what are the possible defences to a challenge?

½ mark per point up to 4 marks

18. Detail what types of disbursements can be charged to an insolvent estate and what authorisation, if any, is required prior to drawing them.

½ mark per point up to 4 marks

19. In what circumstances must the trustee in a sequestration notify a debtor that he is required to undertake a course of financial education?

½ mark per point up to 4 marks

20. What debts is a debtor not be released from following discharge from sequestration?

½ mark per point up to 4 marks

PART C

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

21. A sequestration petition has been presented against Stuart White on 1 June 2018 for the sum of £25,000. The bankruptcy hearing is scheduled for 13 June 2018.

Mr White does not dispute that the debt is due and has contacted your office for some general advice.

Requirement:

- a) Write a letter to Mr White detailing the consequences for him if he is declared bankrupt, his obligations to his trustee and the restrictions imposed on him.

½ mark per point up to 11 marks

- b) In a sequestration what are the general functions of the trustee?

½ mark per point up to 4 marks

Total 15 marks

- 22.** David Bent has approached your principle and confirmed he wants to sign a trust deed. He has provided copies of his bank statements and recent wage slips and you are using them to verify his income and expenditure statement.

On the bank statements you notice regular payments being made into his bank account. You have asked Mr Bent what these payments relate to and he got very angry and abusive before telling you that they related to his army pension but that he did not think that this should be included in any assessment of his income he had fought for his country. Mr Bent has said that will go elsewhere for advice on a trust deed if you insist on including his pension as a source of income and will make a complaint about you to the ombudsman.

Requirement:

- a)** Identify and define the fundamental principles of the Insolvency Code of Ethics which should be considered when taking and dealing with any insolvency appointment.

½ mark per point up to 4 marks

- b)** Identify and name the possible ethical threats for your firm if you decide to continue assisting Mr Bent.

½ mark per point up to 2 marks

- c)** What advice must the insolvency practitioner give Mr Dent before he is able to sign a trust deed?

½ mark per point up to 5 marks

- d)** What must a insolvency practitioner ensure she does when consulted by two individuals who are married, or in a civil partnership, who are considering signing trust deeds and why is it necessary?

1 mark per point up to 4 marks

Total 15 marks

PART D

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

- 23.** You are the case administrator dealing with the sequestration of Simon Scammer. Mr Scammer was involved in various business ventures which ultimately ceased trading following his sequestration.

A number of irate creditors attended the statutory meeting of creditors and complained of Mr Scammer's dubious business practices and demanding that he be held to account. The trustee confirmed investigations into the debtor's behaviour pre sequestration would be undertaken with a view to making an application for a bankruptcy restriction order ("BRO"), if appropriate.

Requirement:

Draft a memorandum to the trustee detailing:

- a)** the grounds for making a BRO

½ mark per point up to 11 marks

- b)** the potential duration of a BRO

½ mark per point up to 4 marks

Total 15 marks

24. Harry Prince has contacted you to discuss his financial situation. He is finding his predicament overwhelming; he has tried, unsuccessfully, to deal with his creditors on an informal basis. A creditor has served a charge for payment in respect of a debt of £2,400 and is threatening a wage arrestment. Mr Prince is worried he'll be made bankrupt. He is very vague about his overall level of debt and his financial situation generally. You manage to find out he works for the NHS and is also a director and shareholder of his estranged wife's limited company. Mr & Mrs Prince remain on good terms but she is unaware of his debt problems. She resides in the formal marital home with their two children. Mr Prince is obviously worried that the house will be at risk.

He heard he can "write off" his debts but thinks there must be a catch. You explain you need further information to assess his situation and suggest that Mr Prince comes into the office for a meeting, when you can discuss the possible solutions. Due to his shift pattern he can't attend a meeting for at least two weeks. He reassures you that he'll find out all the information you need but asks that you summarise the formal options available, so he can consider his situation before the meeting.

Requirement:

Summarise the formal debt solutions for Mr Prince, making sure you consider the limited information provided by Mr Prince and also address his concerns about the imminent threat of bankruptcy. You should not recommend any specific solution.

½ mark per point up to 15 marks

Total 15 marks

- 25.** You are the case manager dealing with the sequestration of George Charles who was sequestrated on the 1 June 2018 following a debtor's application to the AiB. Mr Charles had traded as Prime Pipes Plumbing, but has recently found a sales job for a plumbing merchant.

Requirement:

- a)** Prepare the statement of affairs based on the initial information available, as follows:

Mr Charles jointly owns the marital home at 24 Whiskey Close. An on line valuation website suggests a value of £160,000 and the outstanding mortgage is £120,356.

Anticipated selling costs are:

- Estate Agent – 1.5% of the sales price
- Legal fees - £950

The debtor has confirmed he has 1200 shares with Sparks Electricity.

- Value at date of purchase - £2.34
- Value at date of sequestration - £1.79

There is a joint endowment policy linked to the mortgage with an estimated surrender value of £22,000.

The debtor has a white van with a book value of £11,200, which your agent has valued at £9,000. The equipment is subject to hire purchase (HP) with £7,200 outstanding.

The debtor has advised there is £2,010 in a deposit account at the Bank of Lanarkshire.

There is stock valued, on a cost basis, at £12,300. A supplier has intimated a retention of title claim for stock valued at £2,339.

Your selling agent has agreed to charge a fee of 17% on sales achieved.

Mr Charles has a car valued at £2,900, which he states he needs for work.

Suppliers are owed £14,250 with other creditors due £63,571.

½ mark per point up to 7 marks

- b) You have completed your case administrator and the actual outcome is detailed below:

The property sold for 15% more than the asking price.

When you surrendered the endowment policy, a bonus of £926 was applied to the value.

It was established that the HP Company was due contractual termination fees of £746 in respect of the agreement for the van.

Mr Charles' current account with the Bank of Lanarkshire was overdrawn by £800.

Mr Charles' new job included a company car.

The trustee successfully pursued a PPI claim and received £6,400 after paying 25% of the award to the PPI agent.

The shares were sold at a price of £2.56 per share. There was a fee of £46 for selling.

The supplier's claim in respect of retention of title was successful.

Stock sold realised 40% of cost.

Trustee's fees to date are £6,200 and remain unpaid, with anticipated fees to close of £1,500.

Requirement:

Compile a Scheme of Division based on the actual position and showing the dividend payable to creditors.

Show your workings and any assumptions/notes.

Ignore statutory costs/outlays.

Ignore VAT

½ mark per point up to 8 marks

Total 15 marks