



Candidate Number _____



INSOLVENCY PRACTITIONERS ASSOCIATION

CERTIFICATE OF PROFICIENCY IN PERSONAL INSOLVENCY

Examination 7 June 2013

INSOLVENCY

(3 HOURS)

Part A: All questions to be answered
Part B: All questions to be answered
Part C: 2 questions to be answered

The questions in Part A carry the marks as indicated

All questions in Part B and Part C carry 15 marks

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 Part B and Part C questions in the ICSA booklet(s) 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 2013.

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 the answer booklet(s) using the treasury tag provided.

Candidates should remain seated until the Invigilator has collected the tagged question paper and answer booklet(s). It is the candidate's responsibility to ensure that all answers are handed to the Invigilator.

References to the 1985 Act is the Bankruptcy (Scotland) Act 1985

References to the PTD Regs is the Protected Trust Deeds (Scotland) regulations 2008, as amended.

References to SIPs are to Statements of Insolvency Practice.

Copyright Notice

This examination paper and materials relating to it are copyright of the Insolvency Practitioners Association. No part may be reproduced in any material form except as may be authorised by law or with our consent in writing. All rights are reserved



Candidate Number _____

CANDIDATE NUMBER.....

PART A

MULTIPLE CHOICE AND SHORT FORM QUESTIONS

THE CORRECT ANSWER TO EACH OF THE QUESTIONS IS TO BE INDICATED BY PLACING A CROSS IN THE APPROPRIATE BOX.

FOR QUESTIONS 1 TO 10 ONLY ONE ANSWER IS REQUIRED. THERE IS ONE MARK FOR EACH OF THOSE QUESTIONS.

FOR QUESTIONS 11 TO 20 EACH QUESTION CARRIES THE MARKS INDICATED.

- 1 Within what period after the date of publication in the Edinburgh Gazette of the granting of the trust deed must the Trustee send the documents to the creditors seeking protection of the trust deed (PTD regulation 8)?
- a) 5 days
 - b) 7 days
 - c) 2 weeks
 - d) 1 month
2. Which one of the following is not exempted from vesting in a Trustee in sequestration?
- a) Income of the debtor
 - b) Any property kept in a dwelling house which is not a non-essential asset
 - c) Proceeds from a compensation claim for personal injury
 - d) Any property held in trust
3. At what frequency must a Trustee in a trust deed send to the debtor and each creditor and the Accountant in Bankruptcy a statement of his accounts?
- a) Every 6 months
 - b) 6 months from the protection date and every 12 months thereafter
 - c) At the 24 month stage and every 6 months thereafter
 - d) At intervals of not more than 12 months
4. What is the maximum amount of funds in a sequestrated estate which a Trustee can retain in his hands without depositing it in an account in the name of the debtor's estate in an appropriate bank or institution? (Section 43(2) of 1985 Act)
- a) None
 - b) £100
 - c) £200
 - d) £500



5. What SIP deals with office holders' remuneration?
- a) SIP 7 (Scot)
 - b) SIP 8 (Scot)
 - c) SIP 9 (Scot)
 - d) SIP 10 (Scot)
6. Which type of diligence cannot be cut down or equalised by virtue of an award of sequestration?
- a) An inhibition served within 60 days prior to the date of sequestration
 - b) An earnings arrestment
 - c) A Decree of Adjudication obtained 18 months before the date of sequestration
 - d) A Money Attachment executed after the date of sequestration
7. After receiving a request to consent to an application for a debt Payment Programme under DAS, a creditor has a certain period within which to lodge an objection to the application. Is it:-
- a) 14 days
 - b) 21 days
 - c) One month
 - d) 5 weeks
8. From which one of the following liabilities does a debtor in a sequestration not receive his discharge?
- a) A liability to pay a fine or other penalty due to the Crown
 - b) Arrears due to the Child Support Agency
 - c) A Student Loan
 - d) Any liability incurred by reason of fraud or breach of trust



9. A creditor who has objected to a trust deed which has become protected, or a creditor who did not receive notification of the trust deed may present a petition for sequestration within what period:
- a) Not later than 5 weeks after the date of the Edinburgh Gazette publication
 - b) Within 3 months of the granting of the trust deed
 - c) Not later than 6 weeks after the date of the Edinburgh Gazette publication
 - d) Within 60 days of the granting of the trust deed
10. A debtor, who has been sequestrated at the instance of a petitioning creditor, transferred his half of the title in a piece of land to his uncle. The Trustee is in a position to consider challenging this transaction as a gratuitous alienation, but can only present a statutory challenge if the transaction was within a certain period prior to the sequestration. Is this period:
- a) Within 5 years of the date of the award of sequestration
 - b) Within 2 years of the date of sequestration
 - c) Within 5 years of the date of sequestration
 - d) Within 2 years of the date of the award of sequestration



Candidate Number _____

NOTE: 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. Where the family home of the debtor requires to be sold by a Trustee in sequestration, what consent is required, and what action will require to be taken if such consent is not obtainable **(2 marks)**

12. In terms of PTD Regulation 6, prior to the granting of a trust deed, the Trustee must advise the debtor of certain matters which may result from the granting of a trust deed. List four of these. **(2 marks)**



Candidate Number _____

13. Four months prior to the date of sequestration the debtor arranged for a book debt due to his self-employed business to be paid direct to one of his creditors. What action is available to the Trustee to challenge this transaction as an unfair preference, and why? Does the creditor have a defence against such a challenge? **(2 marks)**
14. Where a debtor in a trust deed has title to heritable property, what action in regard to public registers should the Trustee take to protect this asset for the benefit of the creditors? If any action is taken, is there then a requirement to take consequent action at the termination of the trust deed? **(2 marks)**



Candidate Number _____

15. After caution has been found in respect of a sequestration, what action is then required, and within what timescales, to notify both the insurers and the recognised professional body of the Trustee of the bonding details? **(2 marks)**



Candidate Number _____

NOTE: 4 mark questions

16. Section 1A of the 1985 Act details the functions of the Accountant in Bankruptcy. Summarise the supervisory and other roles of the AiB **(4 marks)**



Candidate Number _____

17. The Trustee in a sequestration is considering whether or not to convene a Statutory Meeting of Creditors. What factors would be taken into account in the decision **(2 marks)**, within what timescale has the meeting to be held **(1 mark)**, and what period of notice has to be given to the creditors **(1 mark) (Total - 4 marks)**



Candidate Number _____

18. Where there is heritable property in a trust deed, what action does the Trustee have to take in accordance with SIP3A (Scot)? **(4 marks)**



Candidate Number _____

- 19.** State and briefly explain four of the threats to the fundamental principles in the Insolvency Code of Ethics. **(4 marks)**



Candidate Number _____

20. In terms of Section 51 of the 1985 Act, what is the order of priority of distribution of the funds in the debtor's estate? **(4 marks)**

**PART B****Both questions in this section are compulsory**

21. You are assisting your manager in preparing the Statement of Affairs and Estimated Scheme of Division to present to the creditors with a view to obtaining the protection of a trust deed which was granted on 1 April 2013. The information you have is as follows:

The Heritable Property at 121 Overbarrow Road, to which the debtor has sole title, has been valued at £235,000. There is a mortgage due to the Bank for £220,000.

The debtor has agreed to make a voluntary contribution from income of £450 per month for a period of 36 months, and a friend has agreed to pay a lump sum of £10,000 into the trust deed, but this sum will only be payable in the event that the trust deed becomes protected.

The Trustee estimates that his remuneration will be £5,500 + VAT. A sum of £800 has already been paid to a debt management company from whom the case was referred. The cost of bonding is £150, with advertising and other outlays amounting to £85.

The following are the estimated liabilities:

Credit Card Company A	9,750
Credit Card Company B	12,950
Credit Card Company C	13,500
Credit Card Company D	7,200
Payday Loan 1	375
Payday Loan 2	450
Debtor's mother	5,000

Your investigations and communications have established the following:

You have received a letter from Credit Card Company A that it successfully served an inhibition on 30 November 2012.

A letter from the debtor confirming that he will submit any monies received from claims in respect of mis-sold PPI to the trustee, and he has just received a cheque for £1,800 from Credit Card Company C in respect of a mis-sold claim.

Requirement:

- a) Prepare a note for your principal on the issues involved with realising the equity in the property, and the various means by which this can be achieved, incorporating these in the documentation which you propose to send to the creditors. In particular comment on the preference, if any, which the inhibition gives to Credit Company A, and what action, if any, the Trustee should take. **(4 marks)**



Candidate Number _____

- b) On the basis of the information now available, please prepare an Estimated Projected Scheme of Division for the creditors, bringing out the proposed dividend **(6 marks)**
- c) What is required to render the fee of £800 which has been paid to the debt management company to be treated as a valid outlay from the trust deed estate? State the extent of disclosures, if any, which have to be made to the creditors, and when? **(4 marks)**
- d) What documentation, if any, may be required to substantiate the claim for £5,000 from the debtor's mother **(1 mark)**



22. Bankruptcy Outcome

- A) A sequestration petition was presented to Court on 31 January 2012, and the appointment of your principal as Trustee was made on 30 April 2012, being the date on which sequestration was awarded. At the Statutory Meeting of Creditors held on 16 June 2012 the appointment of your principal as Trustee was confirmed by those present at that Meeting.

The family home is jointly owned by the debtor and his spouse, and the only asset available to the sequestrated estate is the debtor's half interest in the property. The property has been valued at £400,000 over which there is one registered standard security for £220,000. The mortgage is up-to-date and there are no plans by the mortgagee to commence legal proceedings for possession. The non-bankrupt spouse has made no claims for an increased share of the equity.

There are limited creditors in the sequestration. Three creditors have lodged valid claims which total £25,000. Further claims are expected to be lodged by the following creditors: Eleco for £1,000, Natclays Bank for £9,000 and O3 phones for £250. No other creditor claims are expected.

The debtor's spouse is not in a position to purchase the half-share of the equity which vests in the Trustee, and there is no possibility of third party funds being introduced to do so. The debtor and his spouse have agreed to sell the property on the open market with agents who will charge 1.5% of the sale price + VAT. The agents are advising that a sale at £500,000 is achievable and a sale should be concluded by 31 October 2013.

The conveyance for the sale will be carried out by solicitors for £2,000 + VAT.

The debtor and his spouse have enquired as to whether the sale of the property will allow all the creditors to be paid in full, and they have asked your principal to provide them with a calculation so that they can see if there will be surplus funds available after all liabilities and costs have been met.

The remuneration of the Trustee up to the date of the Statutory Meeting was fixed at £3,500 by the Accountant in Bankruptcy. Commissioners were elected at the Statutory Meeting. Within the last week the Trustees' remuneration from the date of the Statutory Meeting has been fixed by the Commissioners at £6,000 + VAT which includes an estimated sum of £2,000 required to finalise the sequestration. The Trustee has incurred advertising outlays of £100 + VAT.

The petitioning creditor's costs are £1,275 (VAT inclusive), and agents' fees for the property valuation of £150 + VAT. The case has been bonded with a bond fee of £210 and insurance has been obtained by your principal over his interest in the property at the sum of £200. The audit fees payable to the Accountant in Bankruptcy are £525, and fixed fees payable to the Accountant in Bankruptcy are £82.

There have been no asset realisations to date.



Candidate Number _____

Requirement

Compile an estimated payment-in-full calculation for the debtor and indicate whether the estimated equity vesting in the estate will be able to clear the sequestration in full.

10 marks

- B)** The spouse is not happy about the extent of the Trustee's fees. She wants a breakdown of costs.

Requirement

What are the remedies available to the spouse to question or oppose the Trustee's remuneration?

2 marks

- C)** The sale completes and the debtor wishes to recall the sequestration on the grounds that all creditors are able to be paid in full.

Requirement

Provide a short memo to your principal advising the procedure regarding recall, which should detail the obligations on both the debtor and the Trustee in the process.

3 marks

**PART C**

Only two questions in this section are required to be answered

23. Trustee in Bankruptcy

- A.** Your principal has received her first appointment as Trustee in a sequestration and asked for your advice on the assets in the estate. A creditor's petition was presented to Court on 1 December 2012, and sequestration was awarded on 1 May 2013, on which date she was appointed Trustee.

The assets comprise the family home which is occupied by the debtor's family but is solely owned by the debtor, and an interest in a property on the Norfolk Broads which the debtor owns jointly with his wife and which they use as a holiday home. Both properties are subject to mortgages.

Requirement:

Your principal has asked for a memo outlining how:

- 1) Her interest in the properties as Trustee should be protected;
- 2) The process for establishing the value of her interest in the properties;
- 3) Whether there are any time-limits she should be aware of in realising her interest in both properties and how she should avoid any interest re-vesting in the debtor; **(10 marks)**

- B.** A letter is received from the spouse about the properties. The spouse says that she agrees the bankrupt has a 50% interest in the holiday home and that she wishes to buy that interest from the Trustee.

However she believes that title to the family home was put in the debtor's sole name in error. She alleges that it has always been agreed by the couple that she has an interest and in view of the fact that she paid the entire deposit for the purchase, she thinks her share is at least 75% and wants your principal to confirm this is accepted. Your principal is concerned that the spouse is correct about this property even though the Land Register shows that the title of the property is in the sole name of the debtor.

Requirement:

Your principal has asked for a memo with some thoughts on the family home and whether the spouse can claim an interest. What information should she obtain or ask for and from what sources? Who is responsible for producing evidence in support of the spouse's claim?

(5 marks)

**24. Debt solutions**

James is a solicitor aged 27 and his wife Sally is a doctor aged 28. They have a problem in repaying their debts. Their creditors are unwilling to negotiate and there are significant arrears. You establish that they have 2 loans in joint names totalling £9,000. Sally also has various credit cards with outstanding balances totalling £9,450 and she owes £10,000 on a student loan taken out in 2007. James has various other credit cards and loans totalling £27,200.

You review their budget and after taking into account all their essential expenditure you establish that they have a joint surplus of £390 per month available for their creditors. Individually James would have £140 and Sally would have £250 but they tell you that they would prefer to manage their debts together. They live together in rented accommodation, Sally is expecting a significant promotion soon and James is hoping to be considered for partnership before he is 30.

Requirement

- 1) Send a letter to James and Sally summarising possible general debt solutions available, briefly explaining why some of the solutions would not be suitable for one or both of them, without duplicating your answer to part 2 below. **(4 marks)**
- 2) Explain how sequestration, trust deed, DAS or a debt management plan might resolve their debt problems providing reasons for and against each solution. **(9 marks)**
- 3) Provide a conclusion of the advice that you would give to them. **(2 marks)**



25. Self-employed debtor

A debtor by the name of Sam Wilkes has been referred to you for a first meeting with a view to him granting a trust deed for his creditors. You are aware of the following basic information from an initial telephone conversation:

- 1) Sam works for himself as a joiner and has no employees
- 2) He is married and jointly owns a house with his wife which is also where he trades from; they have two children
- 3) He is a keen amateur rugby player and spends significant time away from home with the associated costs
- 4) He has suffered a number of bad debts in the down turn as a result of which his business has been loss making, although he thinks the worst is behind him and he expects to be profitable next year
- 5) His tax affairs are in arrears and HMRC are pursuing him
- 6) He has a number of credit card and other finance creditors.

Requirement:

At the first meeting what matters should be dealt with, taking into account the above information, in considering whether Sam may be suited to entering into a trust deed? **(15 marks)**