



INSOLVENCY PRACTITIONERS ASSOCIATION

**CERTIFICATE OF PROFICIENCY
IN PERSONAL INSOLVENCY
English Version
Examination – 15 June 2012**

PERSONAL INSOLVENCY

(3 HOURS)

Part A: All questions to be answered

Part B: All questions to be answered

Part C: Two 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 each

Part A answers to questions 1 – 10 are to be completed on the question paper provided. Part A questions 11 – 20 should be answered on a separate sheet of answer paper. For Parts B and C each question is to be answered on a separate sheet of answer paper.

The examiner will take account of the quality 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 1 January 2012.

Candidates must ensure that their answers to all questions in parts A, B and C are fastened together with the treasury tags which are provided.

References to the 'Act' and the 'Rules' are respectively to the Insolvency Act 1986 and Insolvency Rules 1986 as amended.

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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 What SIP deals with the presentation of financial information in insolvency proceedings?
- a) SIP 1
 - b) SIP 7
 - c) SIP 10
 - d) SIP 13
2. An IVA Protocol based proposal may be considered as potentially suitable for debtors in all but which one of the following circumstances, without those circumstances being specifically highlighted in the proposal?
- a) A debtor who owes in excess of £100,000 to creditors
 - b) A debtor with 3 or more lines of credit from 2 or more creditors
 - c) A debtor who is self-employed
 - d) A debtor whose primary source of income is benefit based
3. In a bankruptcy based on a petition presented after April 2010, how long does a trustee have for the basis of his remuneration to be fixed?
- a) No time limit
 - b) 18 months following appointment as trustee
 - c) 12 months following the bankruptcy order
 - d) 12 months following appointment as trustee

4. Where an Interim Order is in force, which of these statements is not true?
- a) No bankruptcy petition may be presented against the debtor
 - b) No possession proceedings may be commenced against the debtor's property by a mortgagee.
 - c) No execution or legal process may be commenced or continued without the leave of Court
 - d) No landlord may exercise any right of forfeiture by peaceful re-entry without leave of Court.
5. IVA Progress Reports must what?
- a) Cover a six month period
 - b) Cover a 12 month period from the date of filing the Proposal in Court.
 - c) Be issued within two months of the period end
 - d) Be filed with the Registrar of Voluntary Arrangements
6. Can the Chairman of a meeting of creditors to consider the debtor's proposal increase or reduce the level of remuneration or expenses of the Nominee or the Supervisor using creditors' proxies lodged in his favour?
- a) Yes provided he holds more than one general proxy.
 - b) Not unless the debtor is present at the meeting.
 - c) Yes if the Chairman is the Nominee/Proposed Supervisor
 - d) Only if the proxy in his favour directs him to vote that way.
7. What is the 'relevant time' period for a transaction that may be challenged as a preference under S340 of the Act against an associate of the bankrupt?
- a) 2 years immediately preceding a bankruptcy order
 - b) 2 years immediately preceding a bankruptcy petition
 - c) 6 months immediately preceding a bankruptcy order
 - d) 6 months immediately preceding a bankruptcy petition
8. Which one of the following are not entitled to view the proofs of debt lodged with a Trustee?
- a) A creditor who has submitted a proof
 - b) A person acting on behalf of a creditor who has submitted a proof
 - c) The debtor
 - d) A creditor who has a claim but has not yet lodged a proof

9. If a landlord levies distress post-bankruptcy for pre-bankruptcy arrears which of the following is true?
- a) There is no restriction on the amount of outstanding pre-bankruptcy arrears which the landlord can retain
 - b) The landlord must surrender sufficient distraint proceeds to pay preferential creditors
 - c) The landlord can retain sufficient distraint proceeds to pay up to 6 months' worth of pre-bankruptcy arrears
 - d) The Landlord is entitled to prove for up to 3 months of pre-bankruptcy arrears of rent
10. A Debt Relief Restriction Order may only be made by which one of the following:
- a) Official Receiver
 - b) Secretary of State
 - c) The Court
 - d) The debtor

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. In a Protocol Compliant IVA, what do the standard conditions advise about who can request the Supervisor to call a meeting of creditors and how long from the receipt of such a request must the Supervisor call the meeting of creditors? (2 marks)
12. What steps must a Trustee take when rejecting, either in part or in full, a Proof of Debt lodged in the bankruptcy estate? (2 marks)
13. On what grounds can the Court annul a bankruptcy order under S282 of the Act? (2 marks)
14. In a Protocol Compliant IVA what do the standard conditions state is the discretion given to the Supervisor in respect of the admission of statements of claim into an arrangement? (2 marks)
15. What are the grounds available to the Official Receiver for filing a notice of early discharge from bankruptcy with the Court? (2 marks)

NOTE: 4 mark questions

16. Provided a debtor is domiciled in England & Wales and is not an undischarged bankrupt, or subject to any IVA or bankruptcy proceedings, name 4 other conditions to be met for a debtor to be granted a Debt Relief Order. (4 marks)
17. Apart from the power to bring, institute or defend any legal proceedings relating to the property comprised in the bankrupt's estate, including actions under Ss339, 340 & 423 of the Insolvency Act 1986, name four other powers of the Trustee only exercisable with sanction. (4 marks)
18. Who is entitled to take part in the public examination of a bankrupt and question him concerning his affairs, dealings and property and the causes of failure? (4 marks)
19. What information is required to be given in a Statutory Demand? (4 marks)
20. What insolvency options are available for a creditor to pursue who has an unpaid debt due from a partnership business? (4 marks)

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

21. John Smith, a sole trader, was made bankrupt on 3 January 2011 on the petition of the Commissioners of Revenue & Customs. You were appointed trustee in bankruptcy of the debtor's estate on 16 February 2011.

You have now progressed the bankruptcy to a position where it can be closed following a distribution to the creditors. The debtor did not submit to the proceedings and his wife defended the possession proceedings, albeit no costs were awarded against her.

The matrimonial home was sold for £187,800 and after paying the costs of sale of £5,600 and discharging the outstanding mortgage of £105,000 and a valid charging order of £7,800 against Mr Smith's share of the equity, the net proceeds were divided equally between the Trustee and the debtor's wife who was a joint owner. The trustee's net interest was paid into the Insolvency Service Account ('ISA').

Apart from the deposit on petition the only other realisations made by the trustee were a car for £7,000 and an insurance policy for £8,520. His tools of trade, valued at £1,000, were treated as falling within the provisions of S283(2) of the Insolvency Act 1986.

The non-VATable payments through the bankruptcy estate were the Official Receiver's costs of £1,715; Bond of £180; and Petitioning Creditor's Costs of £1,850. Payments for Statutory Advertising of £150, Agents' Charges of £1,200 and Legal Fees of £8,400 all included VAT.

Your outstanding time costs are £15,840 incurred over 103.25 hours at an average rate of £153.41 per hour. Your Category 2 disbursements are £135 for printing and photocopying and £85 for mileage.

At a meeting of creditors held on 15 May 2011 you sought to fix your remuneration in accordance with Rule 6.138(2)(b) of the Insolvency Rules 1986 on the basis of time costs with authority to draw Category 2 disbursements. The only creditor present or represented at that meeting approved the basis on time costs, but limited to a maximum of £12,000, excluding VAT. Category 2 disbursements were not approved.

You have received and admitted 16 claims totalling £94,020. This included one former employee who had no arrears of pay, but was entitled to two weeks' notice pay, two weeks' accrued holiday pay and three weeks' redundancy pay. His average wage was £7.50 per hour for a 40 hour week.

The debtor was not registered for Value Added Tax purposes.

Ignore ISA Banking Fees and Cheque Issue Fees.

Requirement:

- a) Calculate the Ad Valorem Fee charged to the estate by the Secretary of State. Show your full workings. (5 marks)
- b) Calculate the dividend to Non Preferential Creditors. Show all workings. (4 marks)
- c) Prepare an Estimated Outcome Statement for presentation to the final meeting of creditors. (6 marks)

Total 15 marks

- 22.** Your principal is arranging to be appointed Nominee by Sharon in relation to her proposed IVA. Her proposal to creditors is being drafted but an urgent matter has arisen. Sharon is not an undischarged bankrupt but a bankruptcy petition has been served on her and the hearing date has been fixed for next week. She forgot to tell you earlier. You have had an initial conversation with the creditor and explained that your principal is being appointed but the creditor is determined to proceed with the petition despite being a small percentage of the overall level of debt although they will not oppose an application to Court for an Interim Order.

Requirement:

Set out a note to your principal to assist in advising the debtor about an Interim Order application. You should cover the following matters:

- a) Who may apply for an Interim Order, which Court should hear the application, who should be given notice and what conditions must be satisfied before the court will make an order? (6 marks)**
- b) What matters should be dealt with in the witness statement in support of the application and what additional documentation should be provided? (6 marks)**
- c) What is the effect of an Interim Order and how long will it last? (3 marks)**

Note: you are not required to advise on the contents of the Nominee's report to Court.

PART C**Only two questions in this section are required to be answered**

- 23.** Gail has been working on a self-employed basis as a horse dealer but as a result of purchasing horses which then failed vet checks when she tried to arrange sales has run into financial difficulty. She has incurred a number of debts with suppliers of feedstuffs, equipment, her farrier and vet. She has also used a number of credit cards and personal loans to pay for the rent for the yard from which she trades, vehicle hire, fuel costs, competition entry fees and also to help fund cash payments for horses she intended to sell on. She has been struggling to make ends meet for a couple of years now and realised some time ago that she had little prospect of being able to pay all her debts and faced the prospect of bankruptcy. The saddler for her business obtained a county court judgment for £10,000 four months ago and is threatening further proceedings. HMRC has also been threatening bankruptcy proceedings in respect of unpaid VAT and PAYE/ NIC. She has therefore taken steps to arrange her affairs to protect herself in the event that she is made bankrupt.

Her house was jointly owned with her husband but he agreed to the property being transferred into his sole name and took sole responsibility for the £150,000 mortgage. The total equity in the property at the time of transfer about a year ago was in the region of £120,000. Gail was not paid for her share of the equity as this was a transaction between husband and wife.

Gail transferred ownership of six horses worth between £2,000 and £10,000 each to two creditors who she wanted to make sure were not owed money if she ended up being made bankrupt. One of these was her mother who had made a personal loan of £15,000 to Gail several years ago and the other was the saddler who had obtained judgment, who was previously a friend who had supplied her with saddles and other equipment and with whom Gail had built up a debt of over £10,000. She transferred ownership of three horses to her mother about a year ago and the other three to the saddler three months ago.

Gail was served with a bankruptcy petition by HMRC following which she formed a limited company and transferred her remaining business assets, a horse box, equipment and four horses, to that company (without any payment being made) to avoid them falling into the hands of a trustee in bankruptcy. The total estimated value of these assets was £30,000. Because she will be made bankrupt it was agreed that her husband would be the sole director and shareholder of the company. The company has become the trading vehicle for Gail's business and she is an employee. After the bankruptcy is over, Gail believes the shares could be transferred to her so she would have the benefit of the company assets.

Requirement:

- a) At the hearing of the bankruptcy petition a bankruptcy order was made and your principal has now been appointed trustee. You are reviewing the handover documents received from the Official Receiver and have been asked to prepare a note for the trustee setting out what assets could be claimed for the bankruptcy estate. You should state what types of claims may be made in each of the circumstances set out above, commenting on relevant timescales and matters which would need to be demonstrated to bring successful claims. (13 marks)**

- b) How might the claims be pursued in the absence of funds in the estate? (2 marks)**

Candidate Number _____

- 24.** You have been asked to assist your principal with a meeting he is having with a debtor who is in monetary difficulties and is intending to propose a Protocol Compliant IVA.

Requirement:

Your principal has asked you to provide him with a memo on the following matters from the IVA standard conditions for the meeting:

- a) **What do the standard conditions advise are the debtor's duties and obligations in relation to the Supervisor? (5 marks)**
- b) **When the Supervisor issues the annual report, what matters are specified in the standard conditions that should be commented on with regards to any non-compliance by the debtor? (2 marks)**
- c) **If there is a breach of the debtor's compliance, what do the standard conditions say in respect of:**
 - (i) **Notice of breach to the debtor?**
 - (ii) **Remedy by the debtor of the breach?**
 - (iii) **Failure of the debtor to remedy the breach? (6 marks in total)**
- d) **What do the standard conditions state with regard to the debtor and Supervisor holding arrangement assets in trust? (2 marks)**

25. You received the following email from Paula Smith, a partner in your firm:

“I was talking to Bill last night – apparently I need to send progress reports to creditors on bankruptcy cases now? I don’t think anyone told me about this, did they? Can you get back to me asap”.

Requirement:

a) Draft an email in reply to Paula explaining when the Rules on reporting in bankruptcy changed and briefly outline the changes. (3 marks)

Paula replies immediately saying:

“This really is news to me. I’ve had Phil on to this and he tells me that I’ve only taken 3 bankruptcy appointments that might be affected, all 3 were Secretary of State appointments on 1 June last year (2011) from OR Crayford:

1. J Brown – Bankruptcy Order made on 30 March 2010 on the debtor’s petition. Asset: inheritance following death of relative.
2. F Bloggs - Bankruptcy Order made on 20 August 2010 on a creditor’s petition dated 31 March 2010. Asset: equity in matrimonial home.
3. J Doe - Bankruptcy Order made on 1 November 2010 on a creditor’s petition dated 1 July 2010. Asset: antecedent recovery.

I need to know where we are on this on all three of these jobs immediately – particularly if we’ve missed a report. Can you get back to me this morning please. Thank you.”

Requirement:

b) Draft an email in reply to Paula advising whether reports are required for each of the three bankruptcy cases. (4 marks)

c) Paula follows up with another query about disclosure of costs for reports, she asks: “what do we have to say in our reports about our fees, expenses and creditors’ rights?” (8 marks)