

INSOLVENCY PRACTITIONERS ASSOCIATION

CERTIFICATE OF PROFICIENCY IN PERSONAL INSOLVENCY

Examination Thursday 27 November 2008

PERSONAL 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 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 31 December 2007

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.

Insolvency Practitioners Association
Certificate of Proficiency in Personal Insolvency

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. According to SIP 3, in considering a debtor's proposal for an IVA the Nominee is advised that he should bear in mind the following questions except which one?

- a) Is it feasible?
- b) Is it fair to the creditors?
- c) Is it fair to the debtor's spouse?
- d) Is it fit to be considered by the creditors?

2 Under S360 of the Insolvency Act 1986, a bankrupt is guilty of an offence if he obtains credit to the extent of the prescribed amount, without advising the person advancing credit that they are an undischarged bankrupt. How much is the prescribed amount?

- a) £250
- b) £500
- c) £1,000
- d) £5,000

3 Where a debtor is an undischarged bankrupt and subsequently applies for an interim order because he intends to propose an IVA, for the purposes of assessing a creditor's entitlement to vote at the creditors' meeting, which one of the following statements is correct?

The claim is calculated by reference to:

- a) the amount of the debt owed at the date of the interim order
- b) the amount of the debt owed at the date of the date of the creditorsq meeting
- c) the amount of the debt owed at the date of the bankruptcy order
- d) the amount of the debt owed at the date of the proposal

4 A Bankruptcy Restrictions Order may be made for how long?

- a) Between 2 and 15 years
- b) 12 months
- c) Up to 5 years
- d) Between 1 and 10 years

5 Which of the following is not a bankruptcy offence?

- a) Fraudulent disposal of property
- b) Rash and hazardous speculation
- c) Absconding with assets
- d) Making false statements

6 Within what time period must a dissenting creditor who had notice of an IVA meeting apply to court under s262 of the Act to challenge the meeting's decision?

- a) 14 days from the date of the meeting
- b) 14 days from the date of filing of the chairman's report at court
- c) 28 days from the date of the meeting
- d) 28 days from the date of filing of the chairman's report at court

7. How long does a debtor have to comply with or set aside a statutory demand?

- a) 1 week
- b) 2 weeks
- c) 3 weeks
- d) 4 weeks

8. Who is bound by the terms of an IVA?

- a) Only creditors who had notice of the meeting
- b) Only creditors who had notice of the meeting and were entitled to vote
- c) All creditors who were entitled to vote even if they did not receive notice
- d) All creditors who were entitled to vote excluding associate creditors

9. In accordance with the Rules, how often must a supervisor of an IVA send an abstract of his receipts and payments (if any) to creditors?

- a) Not less often than once every 6 months
- b) Not less often than once every 12 months
- c) As often as the proposal directs
- d) On the first anniversary and then by agreement with creditors

10. Who/which of the following maintains a register of individual voluntary arrangements?

- a) The County Court for the district in which the debtor resides
- b) The Official Receiver
- c) The High Court
- d) The Secretary of State

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. According to the IVA protocol standard conditions, what is meant by the term “after-acquired assets”? (2 marks)**
- 12. The Official Receiver acts in what capacity in relation to a bankrupt’s estate upon the making of a bankruptcy order and how long does he have to decide whether or not to convene a first meeting of creditors for the purposes of appointing someone other than the Official Receiver as trustee? (2 marks)**
- 13. In accordance with the provisions of S254 of the Act, what is the effect of an application for an Interim Order upon a landlord to whom rent is owed? (2 marks)**
- 14. What are the main criteria for membership of a creditors’ committee in bankruptcy proceedings? (2 marks)**
- 15. Providing that a payment was made to a creditor within the relevant time as defined in S341 of the Act, what two other main conditions are required for a payment to be regarded as a preference within the meaning of S340 of the Act? (2 marks)**

NOTE: 4 mark questions

- 16. In accordance with the standard conditions, how and for how long may a supervisor extend a protocol compliant IVA without convening a creditors' meeting? (4 marks)**
- 17. What information would you expect to be contained in a debtor's petition (not his statement of affairs)? (4 marks)**
- 18. For the purposes of an IVA, what statutory requirements must the debtor comply with to enable him to apply for an Interim Order? (4 marks)**
- 19. Name three powers which are exercisable by a trustee in bankruptcy with sanction under schedule 5 of the Act. (3 marks)
From who is sanction obtained? (1 mark, total 4 marks)**
- 20. What grounds may be taken into account by the court in considering whether it is appropriate to make a Bankruptcy Restrictions Order? (4 marks)**

PART B

Both questions in this section are compulsory

- 21.** Your principal is acting as trustee in bankruptcy of a bankrupt's estate and asks you to advise her on her options in relation to dealing with the bankrupt's interest in a property.

The property is the dwelling house of the bankrupt, his wife and their three children. The bankrupt and his wife own the property jointly and have done so for a number of years. The bankrupt presented his own bankruptcy petition on 25 June 2008 and he was duly made bankrupt on that date.

Your principal was appointed trustee by the Secretary of State on 3 November 2008. Initial attempts to realise the bankrupt's interest in the property have been resisted by the bankrupt and his wife.

Your principal says she has heard about something called the three year 'use it or lose it' rule and wonders if this should be of any concern to her.

REQUIREMENT:

Write a memo to your principal to advise her on the following:

- a. The key practical steps involved in establishing the proportion of the equity which vests in the trustee and consequent value of the trustee's interest (5 marks)**
- b. The statutory options which are open to the trustee in dealing with her interest in the property and what she should do to avoid the property re-vesting in the bankrupt in accordance with the '3 year' provisions as set out in S.283A of the Act. (7 marks)**

If a trustee's interest in a dwelling house is of no realisable value, how may a trustee abandon that interest back to the bankrupt if he doesn't wish to wait for the property to re-vest in the bankrupt in accordance with the '3 year' provisions? Why might this be advantageous? (3 marks)

- 22. The IVA protocol standard conditions set out a number of duties and obligations of a debtor in relation to the supervisor. What are they? (5 marks)**

In accordance with the IVA protocol standard conditions what will be regarded as a breach of the arrangement by a debtor? If a debtor breaches the arrangement, what procedure should the supervisor follow and what option(s) are available to the debtor in those circumstances according to the protocol? (10 marks)

PART C

Only two questions in this section are required to be answered

23. You have been approached by Ms P Fish who trades as an aquatic centre. You have agreed to act as nominee in relation to her Individual Voluntary Arrangement proposal. She is not subject to a bankruptcy order. An Interim Order was obtained on 15 November 2008 and the meeting of creditors is being held today.

You have received the following claims:

- a) Claim by Freshwater Bank Ltd for £30,000. The claim is based on a guarantee liability given by Ms Fish for an overdraft of Poisson Ltd, a company of which she is a director. The guarantee is limited to £15,000. The current overdraft stands at £30,000. The bank has made formal demand under the terms of the guarantee to protect their position.
- b) Claim from H M Revenue & Customs for £50,000 in relation to Income Tax for the years 2004-2007. The claim is based on submitted accounts and a return for the year 2004 which shows a liability of £15,000, and on assessments based on estimates that Ms Fish says are grossly overstated. Ms Fish says she will provide you with draft accounts shortly after the meeting for the years 2005-2007 which she says will show ~~some~~ some losses+she has incurred whilst trading.
- c) Claim from Mr Pisces for £150,000 rental arrears. Mr Pisces is the landlord of the trading premises. The lease for Ms Fish has 10 years left to run at an annual rent of £15,000 pa. Mr Pisces has confirmed that he will be re-letting the premises in 6 months at a reduced rental value of £10,000 pa. Six months rent is currently outstanding. (NOTE: Ignore any potential rent reviews in your answer)
- d) Claim by Fishy Supplies Ltd for £37,500 for goods supplied. The claim is supported by invoices for £20,000 for the period 01/02/08 . 31/05/08 and a further invoice dated 1/5/02 for goods supplied between 01/04/02 . 30/04/02. A request for payment for this invoice was sent on 21/5/02. The account was queried at the time, but nothing further was heard.
- e) Claim from Great White Building Society for £35,000. The claim is for an estimated shortfall arising from a mortgage debt partly secured on a property owned by Ms Fish in Bristol. The mortgage redemption figure is £145,000. The Building Society has supplied a valuation of the property by their internal property team based in Liverpool which is in the sum of £110,000. Ms Fish has provided a current valuation by a RICS registered local agent in the sum of £140,000. Both valuations are on an open market basis.
- f) Claim from Sushi Inc of Kyoto, Japan for delivery of Koi Carp to the aquatic centre. The Koi were delivered on 25 July 2008, the invoice is dated 1 August 2008 and the amount due for the Koi is ¥3,000,000.
The Exchange rate at the date of invoice was ¥250 - £1
The Exchange rate at the date of the Interim Order was ¥300 - £1
The Exchange rate at the date of the meeting was ¥275 - £1

REQUIREMENT:

For each of the above, advise with reasons how you would deal with the claims for voting purposes. (2 marks each)

If all creditors vote by proxy and have appointed the Chairman as the holder of their proxy votes, complete a proxy schedule to show the outcome of the voting. Votes are held in favour of the arrangement without modification from every creditor except Mr Pisces who votes against the proposed arrangement. You can assume that all proxies are valid and received in time for the meeting. (3 marks)

24. Your principal has asked you to meet with Tom Cockles who is in financial difficulty and has requested some initial advice on his options.

At the meeting you establish the following information:

- Mr Cockles is 47 years old, married with 3 children.
- His eldest son is at university and Mr Cockles assists with his tuition fees
- His other 2 children are 15 and 6 years of age and are both in full-time education . the 6 year old suffers from Aspergers syndrome, (a disabling illness), and visits a special education establishment twice a week.
- Mr Cockles is in full-time employment. He works as an architect. Work levels have fallen in the firm he works for as a result of the economic slowdown.
- His wife works part-time in a charity shop.
- He and his wife own their matrimonial home jointly. The property is valued at £250,000 and there is a mortgage of £150,000. The mortgage is being paid and Mr Cockles is adamant that the family home is preserved, especially as any move would be difficult for his son suffering with Aspergers syndrome.
- He has recently purchased a new people-carrier+vehicle that is worth £10,000 and which he uses for the %school-run+and to get to work. The vehicle is not subject to any lease or hire purchase agreement.
- His wife owns a second-hand Ford Fiesta worth £250.
- He holds a life policy that matures in two years time
- He has a pension policy under which benefits can be taken from the age of 50.
- Total household income is £2,950pcm and expenditure is £2,500pcm.
- He has total debts of £77,000. The main creditor is HELP Bank plc in respect of an unsecured loan of £25,000. Payments have been missed and the bank is now pressing for repayment and has commenced litigation.
- The remaining debts are a mix of credit cards, further loans and a bank overdraft.

At the end of the meeting, Mr Cockles advises you that he would like to avoid %any embarrassment+in respect of his current financial situation.

REQUIREMENT:

Draft a letter to Mr Cockles setting out the main insolvency solutions available to him, commenting on the key implications for him of each procedure. Advise what you would recommend taking account of the information provided to you at your meeting. Your answer should not just be restricted to statutory insolvency procedures. (15 marks)

25. Today is 27 November 2008 and you have been appointed as Trustee of the bankruptcy estate of Arthur Atkinson.
- Mr Atkinson was adjudged bankrupt on 21 November 2008 on a petition presented to the High Court by HM Revenue & Customs on 15 October 2008 for unpaid VAT.
 - Your appointment was made by the Secretary of State on 24 November 2008 and the appointment was certified on the same day.
 - Mr Atkinson trades as a supplier and installer of specialist equipment for disabled people. Until the bankruptcy he employed one person on a full-time basis. This employee was made redundant by the Official Receiver immediately following the making of the bankruptcy order. He is owed four days holiday pay, a week's wages and redundancy pay.
 - Mr Atkinson has one ongoing job which has WIP outstanding of £10,000. The final amount due under the contract is £25,000 and would require a further 4 weeks work to complete. If the work is not completed the contract has no value. Mr Atkinson estimates that the cost of completion of this work would be £2,000 excluding his time. He is happy to complete the work.
 - The stock he is using is subject to an ROT claim by a supplier who is owed £1,000.
 - He is owed money for two jobs completed before he was made bankrupt. One debt for £5,000 is four weeks old and the second debt for £3,000 arose at the end of 2007.
 - He has a bank account with a £1,000 credit balance. His wife also pays her wages into this account.
 - With his wife, he jointly owns their matrimonial home purchased in 1990. It is subject to two mortgages. The second mortgage was in respect of a loan advanced 12 months ago. His wife has made a claim that she was responsible for the deposit paid on the purchase of the property and therefore the "entire equity is hers", despite the fact that it was purchased in their joint names.
 - He has a personal pension policy and a life policy. A further term assurance policy was transferred to his wife in January 2008 for no consideration.

REQUIREMENT:

As Trustee, what steps would you take in the first month of your appointment? Your answer should refer to statutory obligations as well as to practical steps. (15 marks)