

INSOLVENCY PRACTITIONERS ASSOCIATION

**CERTIFICATE OF PROFICIENCY
IN PERSONAL INSOLVENCY**

Examination - 11 June 2010

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 1 January 2010.

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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**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 A supervisor of an IVA may not challenge any antecedent transactions apart from which one of the following?

- a) Transactions defrauding creditors
- b) Extortionate credit transactions
- c) Preferences
- d) Transactions at an undervalue

2 Which one of the following assets would be included in a bankruptcy estate?

- a) Property held by the bankrupt on trust for a third party
- b) A car of modest value to enable the bankrupt to commute to work
- c) Rights under a personal pension policy
- d) An inheritance from the bankrupt's late mother's estate

3 What is the maximum length of time for which a bankrupt may be subject to an Income Payment Order?

- a) 3 years from the date of the bankruptcy order
- b) 5 years from the date of the bankruptcy order
- c) 3 years from the date of the income payment order
- d) 5 years from the date of the income payment order

4 Which one of the following is a feature of a Debt Management Plan?

- a) Automatic release from debts
- b) Automatically binding on unsecured creditors
- c) No fixed duration
- d) Protection from action by secured creditors

5 The maximum amount of debt which can be owed to qualify for a Debt Relief Order is:

- a) £5,000
- b) £15,000
- c) £75,000
- d) No limit

6 Which one of the following statements is true:

- a) A bankruptcy petition presented by a creditor cannot be heard until at least 14 days from the date of the petition
- b) A bankruptcy petition presented by a creditor cannot be heard until at least 14 days from the date of service of the petition on the debtor
- c) A bankruptcy petition presented by a creditor cannot be heard until at least 7 days from the date of the petition
- d) A bankruptcy petition presented by a creditor cannot be heard until at least 7 days from the date of service of the petition

7 Which one of the following statements is false:

Where a debtor intends to make a proposal for a voluntary arrangement without an interim order:

- a) The nominee must report to court within 14 days from receipt of the debtor's proposal and statement of affairs
- b) The nominee is not required to report to court but must report to creditors and the debtor within 14 days from receipt of the debtor's proposal and statement of affairs
- c) The nominee must report to court within 7 days from receipt of the debtor's proposal and statement of affairs
- d) The nominee is not required to report to court but must report to creditors and the debtor within 7 days from receipt of the debtor's proposal and statement of affairs.

8. 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

9. How long does a debtor have to either comply with or set aside a statutory demand which has been served on him?

- a) 7 days
- b) 21 days
- c) 28 days
- d) 42 days

10. Which one of the following may not apply to court to challenge the approval of an IVA at a meeting of creditors?

- a) The debtor
- b) The nominee
- c) If the debtor is an undischarged bankrupt, the trustee
- d) A creditor whose claim is fully secured

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 an Interim Order is obtained in respect of IVA proceedings, what specific matters should be included in the nominee's report to Court under S256(1) of the Act? (2 marks)
12. If a Trustee wishes to claim an after-acquired asset for the bankruptcy estate, who does written notice have to be given to and what is the time-limit for the issuing of this notice? (2 marks)
13. If a Trustee is unable to chair a meeting of creditors, who is able to act as chairman in accordance with the Rules? (2 marks)
14. In accordance with the IVA protocol, what responsibility does an IVA provider have when advertising for work via a third party? (2 marks)
15. State two types of debt which are not provable in accordance with the Rules. (2 marks)

NOTE: 4 mark questions

16. Following the approval of an IVA what matters should be reported to the Secretary of State in accordance with the Rules? (4 marks)
17. Who may be ordered to attend a private examination under S366 of the Act? (4 marks)
18. When a trustee intends to claim an interest in a dwelling house, what information should be included in a S283A notice issued to the bankrupt, his spouse or partner or former spouse or partner? (4 marks)
19. In bankruptcy proceedings, on what grounds may an individual's membership of a creditors' committee be terminated?(4 marks)
20. What are the main effects of an Interim Order in connection with a proposed IVA. (4 marks)

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

21. Bob Bobbins was declared bankrupt on 1st April 2010 on a petition presented to Court by H M Revenue & Customs on 1 December 2009. Your principal was appointed as Trustee on 1st June 2010 at a meeting of creditors held that day. Bob traded as a painter and decorator but ceased to trade on the making of the bankruptcy order and now works at a large DIY store. The following matters are disclosed in the hand-over of papers received from the Official Receiver:

- Bob previously owed money to his father and to his friend Paul. His father had lent him £10,000 in November 2007 in respect of his former business to replace a van that had failed an MOT.
- Paul had loaned Bob £3,000 in April 2008 to pay off a tax bill which was the subject of legal recovery proceedings.
- Bob repaid both his father and Paul in full in May 2009 from cashing in shares which were owned by him.
- Bob owned a life policy which had a surrender value of £15,000. Bob surrendered the policy on 1 March 2010 and received the proceeds on 31 March 2010. He put the proceeds in trust for his children.
- Bob lives in a 3 bedroom property which has an estimated value of £250,000. There is a single charge registered against the property and Bob has advised the Official Receiver that the balance outstanding is £100,000. The property is held at HM Land Registry in the sole name of Bob's wife and has been since August 2006. Bob and his wife have lived at the property since the early 1990's and it was previously in joint names. Bob has said he transferred his share to his wife for £1 as she had just cleared a bill of £10,000 to a trade supplier who was threatening legal proceedings and his wife was "concerned about losing the house".
- Bob previously owned a second property which he sold to his brother in January 2005 for £10,000. The property was not in good repair at the time but had an estimated value of £40,000 at the date of transfer.
- Bob has total debts of over £300,000 - the largest debt is to HM Revenue & Customs for VAT that started to accrue from the quarter commencing November 2005 and further debts were incurred from May 2006 onwards and remain unpaid.

Your Principal has asked you to review and consider the above information and to provide him with a memo to advise him as follows:

- a) In respect of each transaction described above, comment on whether the trustee may be able to overturn the transaction and, if so, identify the type of antecedent transaction which appears to be involved. (7 marks)**

- b) In accordance with the Act, what criteria would have to be demonstrated to the Court by the trustee to successfully overturn each transaction. (8 marks)**

22. John Brown was made bankrupt on 30 June 2009 in the Somerstown County Court. The petition dated 1 January 2009 was presented by HM Revenue & Customs for £16,000 estimated assessments of VAT arrears for the period January 2008 to March 2009. A summary of the bankrupt's statement of affairs is as follows:

SUMMARY STATEMENT OF AFFAIRS
JOHN BROWN - SOMERSTOWN COUNTY COURT 269 OF 2009
30 JUNE 2009 (DATE OF BANKRUPTCY ORDER)

	£	£	£
ASSETS			
1 MANOR FARM, SOMERSTOWN		400,000	
LESS AMOUNTS DUE TO SECURED CREDITORS:			
ABC BUILDING SOCIETY (1 ST MORTGAGE)	(300,000)		
XYZ BANK	<u>(40,000)</u>		
		<u>(340,000)</u>	
		60,000	
LESS WIFE'S HALF INTEREST		<u>(30,000)</u>	
SURPLUS FOR ESTATE			30,000
CASH AT BUILDING SOCIETY			7,000
HALF INTEREST IN ENDOWMENT POLICY			<u>3,000</u>
TOTAL ASSETS			40,000
LIABILITIES			
HM REVENUE & CUSTOMS – VAT	16,000		
HM REVENUE & CUSTOMS – PAYE	4,000		
NOTICE PAY (2 EMPLOYEES)	3,500		
HOLIDAY PAY (3 EMPLOYEES)	3,000		
BIG BANK PLC - OVERDRAFT	8,000		
CREDIT CARDS (6)	45,000		
UTILITIES (3)	1,500		
COUNCIL TAX 1 MANOR FARM	<u>2,000</u>		
			<u>(87,000)</u>
			 (47,000)

This case has been passed to you for closure and payment of a first and final dividend.

Mr Brown is an estate agent. For the last 20 years he operated as BEST WEST, trading from his home address. Mr Brown attributed his failure to neglect of his tax affairs – he simply couldn't afford to pay his accountant once the property market collapsed. He realised that he should have cut his overheads (staff for example) but didn't have the heart to do it, relying instead on his credit facilities to keep the business going.

He had two employees, both sales negotiators, who had been with him for the past ten years. They were made redundant on the making of the bankruptcy order. They were both paid £250 per week plus commission on sales over £1 million. No commissions or salary were owed. They were each owed a full four weeks holiday pay. A pension scheme was not operated. The Redundancy Payments Office's (RPO) proof hasn't been received but has been requested. A file note on the ERA file states that RPO have paid £2,500 compensatory notice pay and £1,000 holiday pay to each of the two employees.

You have received the following proofs of debt:

HM Revenue & Customs - VAT - £16,900 for periods 01/07 to 04/08
HM Revenue & Customs - PAYE - £8,100 for 2007/8 and 2008/2009
Council - confirmation of no debt
Utilities (4) – confirmation of no debt from all four
Credit and Store Cards (8) - £63,500
Big Bank Plc - £6,500

The trustee sold his interest in 1 Manor Farm to Mrs Brown having agreed her claim that part of the XYZ Bank debt should be marshalled against the debtor's share of the equity only. Mrs Brown was able to show that of the £40,000 advanced by XYZ Ltd only £15,000 was for their joint benefit, the remainder having been used to pay business and personal debts of the debtor. Mrs Brown has her own salary as a part-time GP and contributes equally to household costs including mortgage payments. The trustee agreed to settle on that basis but without offering any further discount.

The endowment policy was valued at £5,000. The trustee received £2,500 from Mrs Brown for the debtor's half interest.

The £7,000 shown as cash at building society represented the sale proceeds of the debtor's Audi A6. The trustee agreed to allow the debtor to purchase a replacement vehicle for £2,000 out of the funds held and the balance was paid to the estate.

The known costs are:

- The Official Receiver's costs £1,715
- The petition costs £1,285
- Trustee's costs £500
- Trustee's remuneration of £7,500 has been approved and paid

REQUIRED

- (a) Calculate the amount of the settlement with Mrs Brown in respect of the trustee's interest in 1 Manor Farm. You may assume that the trustee's agents confirmed the value of the property at £400,000. (2 marks)**
- (b) Prepare a Receipts and Payments account. (4 marks)**
- (c) Identify and explain what further checks you would make to ensure that all costs had been dealt with, all funds received and any prospective liabilities provided for before proceeding to calculate any dividend payable. (3 marks)**
- (d) Calculate the dividend showing any workings. (You may assume for this purpose that there are no further costs or provisions to be made). (4 marks)**
- (e) Identify and explain what matters must be addressed in the Notice of Intended Dividend and to whom the Notice must be given. (2 marks)**

PART C

Only two questions in this section are required to be answered

- 23. (a) The Insolvency Code of Ethics sets out 5 fundamental principles by which Insolvency Practitioners and their staff should abide. What are these principles? Your answer should briefly explain what is meant by each principle. (10 marks)**
- (b) If a supervisor presents a default petition against a debtor in an IVA and a bankruptcy order is made terminating that IVA, in accordance with the Insolvency Code of Ethics what matters should he take into account when considering whether or not he may act as trustee in bankruptcy? (2 marks)**
- (c) An Insolvency Practitioner wishes to act as trustee in bankruptcy of a bankrupt's estate but a partner in his firm is acting as liquidator of a company which has a claim against the bankrupt. This claim is disputed by the bankrupt. What particular issue arises in these circumstances which the Insolvency Practitioner should take into account in considering whether to accept the appointment? Why might acting as trustee give rise to difficulties? (3 marks)**

- 24.** Your principal has contacted you as he has been approached by an individual who wants to propose an IVA and this individual has heard of the IVA Protocol. Your principal has never dealt with a Protocol Compliant IVA and has a number of questions that he has asked you to consider. You are required to prepare a report for his review. The issues are:
- (a) What criteria does the Protocol suggest would mean that an individual's circumstances may be unsuitable for the application of the Protocol and which, if a Protocol based IVA is to be proceeded with, must be specifically highlighted in the Proposal? (4 marks)**
 - (b) In accordance with the standard Protocol conditions what are the Supervisor's rights and duties to extend the term of a Protocol compliant IVA? (4 marks)**
 - (c) Your Principal has heard the standard conditions provide for "Substantial Compliance" in certain circumstances. What does this mean and how can a debtor qualify for "Substantial Compliance"? (4 marks)**
 - (d) If a debtor is in breach of the terms of a Protocol Compliant IVA and fails to remedy that breach, in accordance with the standard conditions, what options should the Supervisor give to creditors? (3 marks)**

25. Mr and Mrs Terry reside in a detached house in Croydon with their two children age 7 and 5. Mr Terry was made bankrupt on 20 March 2010. Your principal has just taken office as trustee in bankruptcy.

You have reviewed the handover documentation passed to the trustee by the Official Receiver and have established the following information:

Mr Terry has estimated the value of the property at £280,000. It was purchased by the couple 8 years ago for £180,000, shortly after they met and got married, in their joint names as tenants in common. It was agreed at that stage that the beneficial ownership of the property should be split 60/ 40 in favour of Mrs Terry because she had introduced most of the funds from her own resources for the deposit of £30,000 on the purchase price.

The property is subject to an interest only mortgage in favour of Buckingham Building Society. The current balance outstanding is in the region of £150,000. The mortgage payments are 3 months in arrears but Mr and Mrs Terry believe they can make good those arrears from their future income. Both Mr and Mrs Terry are in employment on similar incomes, which has been the pattern throughout their marriage.

Requirement:

Advise the trustee on the main steps to be taken to protect the trustee's interest in the property, to establish the value of that interest and to realise that interest on behalf of the estate.

Is the split in the beneficial ownership likely to be challengeable and if so on what basis?

Explain the different options available to the trustee and to Mr and Mrs Terry in realising the trustee's interest. You should comment on any statutory time frame(s) which may apply.

(15 marks)