



CANDIDATE NUMBER.....

INSOLVENCY PRACTITIONERS ASSOCIATION
CERTIFICATE OF PROFICIENCY IN INSOLVENCY
(SCOTLAND)

Examination 10 June 2011

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 2011.

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 'Act' are to the Insolvency Act 1986 as amended.

References to Sections and Rules are to the Insolvency Act 1986 and the Insolvency Rules 1986 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



PART A

MULTIPLE CHOICE

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. **Which one of the following is an admissible claim in sequestration proceedings in accordance with the Act?**
 - a) A parking fine
 - b) A Confiscation Order under the Proceeds of Crime Act 2002
 - c) Arrears of Ailment payable to a former spouse by mutual agreement
 - d) Arrears of Ailment payable under court decree

2. **In appropriate circumstances you send a document by electronic delivery but a hard copy is requested. How long do you have to comply with this request?**
 - a) 5 business days
 - b) 5 days
 - c) 7 days
 - d) 7 business days

3. **Where notice is given that the Trustee does not intend to call a statutory meeting of creditors, within how many days of the giving of notice may any creditor request the Trustee to call the statutory meeting?**
 - a) 7 business days
 - b) 7 days
 - c) 14 days
 - d) 14 business days



4. **You submit an adverse D report in a liquidation. Which of the following is it not necessary to append to the report?**
- a) A copy of the Statement of Affairs
 - b) A copy of the resolution to wind up the company
 - c) Details of the dividend prospects in the case
 - d) A copy of the minutes of the Section 98 meeting
5. **Which of the following is required for a trust Deed to attain “protected” status?**
- a) A projected dividend of not less than 10 pence in the pound
 - b) Payment by the debtor of a regular monthly contribution from income
 - c) Accession by more than one third in value of notified creditors
 - d) Accession by more than one third in number of notified creditors
6. **In accordance with SIP3A, which of the following may not be paid as an expense of the Trust Deed?**
- a) Payment to an agent of the Trustee for work done prior to signing the Trust Deed in order to ascertain the financial circumstances of the debtor
 - b) Payment of valuation fees in respect of a debtor’s heritable property
 - c) Payment of outlays incurred by the Trustee’s staff in administering the Trust Deed
 - d) Payment to a third party for the introduction of the debtor to the Trustee’s firm
7. **Within how many business days following the directors’ filing Notice of Intention to Appoint Administrators do the directors have to file Notice of Appointment of Administrators?**
- a) 5 days
 - b) 7 days
 - c) 10 days
 - d) 14 days



- 8. Which of the following powers of a liquidator is expressly exercisable with sanction?**
- a) Power to sell the company's property
 - b) Power to raise money on the security of the assets of the company
 - c) Power to bring legal proceedings for wrongful trading
 - d) Power to appoint an agent
- 9. Which of the following is not a definition of a company's inability to pay its debts for the purposes of an insolvent winding up?**
- a) Failure to pay or compound for a sum exceeding £750 three weeks after the presentation of a statutory demand
 - b) Failure to account to HMRC for VAT or PAYE within 30 days of the due date for payment
 - c) The expiry of the *induciae* of a charge for payment on an extract decree without payment being made
 - d) An assessment by the Court that the value of a company's assets is less than the amount of its liabilities
- 10. Within how many business days following meetings of members and creditors held to consider proposals for a Company Voluntary Arrangement does the Chairman have to file his report in Court?**
- a) 4 days
 - b) 5 days
 - c) 14 days
 - d) 2 days



CANDIDATE NUMBER.....

11. You intend to publish your Administrators' Proposals on a website to discharge your duties under Paragraph 49 of Schedule B1 of the Insolvency Act 1986.

What information must be included in the relevant notice to creditors specifically with regard to accessing the information?

(1/2mark per point up to a maximum of 2 marks)

12. In Trust Deed proceedings commenced after 1 April 2008, list four of the documents which must be sent to the Accountant in Bankruptcy to register protected status.

(1/2 mark per point up to a maximum of 2 marks)



CANDIDATE NUMBER.....

13. Your Principal is acting as Nominee in relation to a director's Company Voluntary Arrangement proposal.

Under SIP 3B what steps should the Nominee take to satisfy himself that the value of the assets is appropriately reflected in the Statement of Affairs?

(1/2 mark per point up to a maximum of 2 marks)

14. In accordance with the Act, within what timescale after the end of an accounting period should a Trustee submit his claim for remuneration and outlays? To whom should such a claim be submitted? What else should be sent within this timescale as prescribed by the Act?

(2 marks)



15. Under the Act, how may a company be an associate of another company?

(2 marks)

16. Your Principal will shortly be appointed Administrator of Jeans Limited, a clothing retailer, by the company's directors. The company trades from five outlets, of which four are leased and one owned. A going concern sale is likely to produce the best outcome for creditors and the Administrator intends to trade the five outlets for a period of at least two weeks while a buyer is sought for the business. The ongoing trade will utilise the stock held in each of the outlets. Business rates have been paid in advance for the trading period, but rent arrears are due to the landlords of the leased outlets.

Based on the facts above, what two issues should the Administrator expressly consider when intending to trade the outlets, and what steps should he take in relation to these?

(4 marks)



CANDIDATE NUMBER.....

17. A partner of your firm has today been appointed at a meeting of shareholders held at short notice as Liquidator of Fresh Fruit & Veg Limited, a company which is insolvent.

Set out the requirements of providing notice of a meeting to creditors in accordance with section 98 of the Act and SIP 8.

(4 marks)

18. Certain types of assets do not vest in the Trustee and therefore do not form part of a sequestrated debtor's estate, such as tools of a debtor's trade.

Set out four other types or categories of assets which do not vest in the Trustee.

(4 marks)



CANDIDATE NUMBER.....

19. A petition for the winding up of Flog It Limited was presented to the Court on 1 July 2010 and your Principal was subsequently appointed interim liquidator on 1 August 2010 when a winding up Order was granted. At a meeting of creditors held on 10 September 2010 your Principal was appointed Liquidator. In the course of your review of the company's financial affairs you have identified that during the four weeks prior to the winding up Order being granted various assets were transferred to another company under the control of the directors, placing them out of reach of Flog It Limited's creditors.

What actions can the Liquidator take in respect of these assets transferred?

(4 marks)

20. Under certain circumstances the Court may, prior to a winding up Order being granted, appoint a Provisional Liquidator upon the presentation of a winding up petition.

Under what circumstances would such an appointment be made? What are the duties of a Provisional Liquidator?

(4 marks)

**PART B****BOTH QUESTIONS IN THIS SECTION ARE COMPULSORY**

21. A partner in your firm was appointed two months ago as Administrator of Summer Limited by Best Bank plc which holds standard security over the company's heritable assets and a floating charge over all other assets, all created on 20 September 2007. You have been provided with the following receipts and payments account and other information in relation to the case.

Administrator's Receipts and Payments Account

Statement of Affairs £		£	£
	Asset Realisation		
160,000	Book debts	30,000	
175,000	Trading premises	175,000	
10,000	Plant and machinery	13,846	
5,000	Stock	6,924	
Uncertain	Development land	17,307	
10,000	Motor vehicles	<u>6,923</u>	
			250,000
	Cost of realisations		
	Statutory disbursements	1,000	
	Legal fees	13,500	
	Agents' fees	5,000	
	Administrator's remuneration	<u>20,865</u>	
			<u>(40,365)</u>
			<u>209,635</u>

- The amount due to Best Bank plc at the commencement of the Administration was £400,000. There have been no payments to the Bank since the Administrator's appointment.
- At the date of appointment the outstanding book debt ledger stood at £200,000. The directors were not aware of any known bad or doubtful debts, however they considered it prudent that a general provision of 20% be applied against the debts when preparing their estimated statement of affairs. Since the appointment you have discovered that there are certain debtors who have rights of set-off in respect of sums owed to them as creditors of the company, totalling £30,000. Furthermore one debtor who owes £10,000 has recently gone into liquidation with no prospect of a dividend to creditors. The Administrator considers that a 20% general provision against the remaining debts continues to be appropriate.
- Agents are to be instructed to assist in the collection of the remaining ledger for a commission of 10% of sums collected.



- Shortly after the Administrator's appointment a sale of the company's business and assets on a going concern basis was completed as follows:

	£
Trading premises	175,000
Stock	10,000
Plant and machinery	20,000
Development land	25,000
Motor vehicles	10,000
	<u>240,000</u>

- The consideration in respect of the purchase of the business and assets was payable as follows:

On completion, £175,000 was paid for the purchase of the property and £25,000 was paid as an initial payment against the other assets (apportioned pro rata to the purchase consideration). The balance of the consideration was payable in 2 equal payments of £20,000 on the 1st of each of the following 2 months.

- Agents' fees of £5,000 have been incurred, 25% of which relates to dealing with assets subject to the Bank's standard security.
- Legal fees of £3,500 have been incurred directly in dealing with the sale of the property. A further £10,000 has been incurred in dealing with the sale and purchase agreement and appointment formalities.
- Insurance costs have been incurred of £1,500 of which £500 directly related to the insurance of the property.
- Employee claims from employees dismissed in the month prior to administration have been received as follows:

	£
Wages	6,800
Holiday pay	8,200
Compensation in lieu of notice	12,500
Redundancy	16,250
	<u>43,750</u>

Wages claims relate to 4 employees owed £1,700 each.

- The following sums are due to HM Revenue and Customs:

VAT	£12,500
PAYE/NIC	£30,000

- According to the directors' statement of affairs trade creditors are owed £450,000.
- The Administrator's remuneration has been agreed as follows:

5% of realisations subject to standard security
15% of all other realisations



CANDIDATE NUMBER.....

- The estimated cost of distributing funds to unsecured non-preferential creditors is £3,500.

The Administrator has been asked to provide an update report to the Bank.

- (a) **Prepare an estimated outcome statement providing details of the amounts anticipated to be recoverable by the Bank under its standard security and floating charge, based on the information provided** (10 marks)
- (b) **Set out the options available for the Administrators in relation to the distributions to unsecured creditors.** (2 Marks)
- (c) **Based on the information available calculate the estimated dividend to unsecured creditors** (3 Marks)



22. Mike, who has been running a business on a self-employed basis as a motorbike mechanic, has recently been sequestrated and your Principal has been appointed Trustee. You have been asked to administer the case and have ascertained the following information:
- The award of sequestration was granted on 1st March 2011 on a creditor's petition presented by HM Revenue & Customs in respect of unpaid schedule D tax going back to 2006/07. The amount of the petition debt is in the region of £126,000, some of it based on assessments as Mike has not been good at submitting his accounts and tax returns.
 - The petition was presented on 27 January 2011 and there was a continuation before sequestration was awarded.
 - Mike has other unsecured debts totalling £183,000.
 - Mike is married to Tracey. Before they were married, Mike and Tracey decided that they would sell their own properties and pool their resources to buy a new house to set up home. The new house cost £180,000 and they put down £30,000 each from the sale proceeds of their own properties. Tracey was serving overseas in the forces at the time of the purchase and they decided that the property would be put in Mike's name to make life easier. However it was always intended that they would own the property jointly although title was never recorded in favour of Tracey. The house was purchased on 30 July 1995 with the balance of the sale price (£120,000) being funded by a mortgage in Mike's name.
 - On Tracey's return from overseas a few months later, the couple married. They set up a joint bank account and all their income was paid into that account. Their household expenses and the mortgage payments were all met from this account. Although their earnings fluctuated from time to time, they both earned similar incomes.
 - In 2007 Mike's mother died and he inherited approximately £160,000 from her estate. The couple had always wanted a holiday home in Devon and this was their chance. Mike ignored the fact that he was in arrears (as usual) with his tax affairs and in October 2008, after he had received his inheritance and using that money, together with Tracey he purchased a small terraced cottage for £150,000. He was able to take advantage of the depressed housing market and got a 'good deal'.
 - It was the couple's intention that the property be owned by them together and accordingly it was purchased by them in joint names. They have let the property (through an agent) for much of the time since they bought it and that income (net of all letting costs) has been paid into their joint bank account.
 - Mike and Tracey do not have any other significant assets apart from £6,000 in their joint bank account. You are aware that the current value of the property is in the region of £260,000 and the balance outstanding to the mortgagee is £110,000.



CANDIDATE NUMBER.....

- (a) Prepare a memo to the Trustee stating with reasons what interest you believe Mike has in the matrimonial home. Clearly state any assumptions. (6 marks)
- (b) Advise the Trustee on Mike's interest in the holiday home. Its value remains in the region of £150,000 and it is free of mortgage or any charges. Is there any way in which the value of Mike's interest which now vests in the Trustee can be enhanced for the benefit of Mike's creditors? If so, state how this could be achieved. (7 marks)
- (c) If there is £6,000 in the joint bank account, comment on whether, and if so how, the Trustee might be able to claim more than a half share of that balance for the estate. (2 marks)

**PART C****ONLY TWO QUESTIONS IN THIS SECTION ARE REQUIRED TO BE ANSWERED**

23. Rachel, aged 27, has come to see you for advice about her current financial circumstances. She explains that she has incurred a range of debts with various credit card and loan companies, totalling approximately £40,000 which she is in no position to pay as she has recently lost her job as a legal executive. She is struggling to find a new job but hopes she will find something soon. She owns a residential property jointly with her partner, Craig, who unfortunately has been out of work himself for some months. There is currently no equity in the house as it was purchased with a 100% mortgage shortly before property prices fell. The couple's borrowing has primarily been in Rachel's name because her job was better paid and was thought to be more secure. Craig has no significant liabilities in his name and neither of them have any other assets of any consequence.

Advise Rachel on her main personal insolvency options. In particular you should comment on sequestration, trust deeds and DAS. Also comment on whether there may be additional options available. Compare and contrast the different insolvency solutions, taking into account Rachel's financial circumstances.

(15 marks)

24. Table Limited was placed into Creditors Voluntary Liquidation in May 2010 and your Principal was appointed Liquidator. A creditors committee was appointed to assist with investigations and various assets were uncovered and realised. The realisation process has now been finalised, however there are insufficient funds available to pay a distribution to any class of creditor.

(a) Set out the practical, legal and regulatory steps that need to be taken to close the case.

(1/2 mark per point up to a maximum of 8 marks)

(b) Set out the items which are required by statute to be specified separately on the liquidator's summary of Receipts and Payments contained in his final report.

(1/2 mark per point up to a maximum of 7 marks)

25. A partner of your firm was appointed as Administrator of Nuts & Bolts Limited on 1 February 2011.

(a) Set out the requirements to report to creditors and the contents of the Administrator's progress report to creditors in accordance with the Rules.

(10 marks)

(b) Set out the matters applicable and procedure for creditors to challenge an Administrator's remuneration or other expenses as being excessive under the Rules.

(5 marks)