



CANDIDATE NUMBER.....

**INSOLVENCY PRACTITIONERS ASSOCIATION**  
**CERTIFICATE OF PROFICIENCY IN PERSONAL INSOLVENCY**

**SCOTLAND**

**Examination 10 June 2011**

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**PERSONAL INSOLVENCY**

**(3 HOURS)**

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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) or paper 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 1 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 'BA' are to the Bankruptcy (Scotland) Act 1985 (as amended).

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

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**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

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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. **In accordance with the Bankruptcy (Scotland) Act 1985, when can an Award of Sequestration be made following presentation of a petition by a creditor?**
- a) Between 6 and 10 days of the petition being presented
  - b) Between 6 and 14 days of the petition being presented
  - c) Within 10 days of petition being presented
  - d) Within 14 days of petition being presented
5. **Which one 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 one 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. **A trustee in a sequestration may resign in all but which one of the following circumstances?**
- a) The debtor lodges a complaint about his assets being realised
  - b) The trustee suffers from ill health
  - c) The trustee is unable to continue acting for whatever reason
  - d) There are joint trustees and it is no longer considered expedient for one of those trustees to continue in office.



- 8. When a debtor signs a Trust Deed, how long after the date of signing doe the trustee have to notify creditors and issue thye prescribed documents?**
- a) Within 7 days of the Trust Deed being signed
  - b) Within 7 days of the trustee becoming aware of the creditor
  - c) Within 7 days of the notice appearing in the Edinburgh Gazette
  - d) Within 7 days of the Trust Deed being registered with the Keeper of Registrations and Inhibitions
- 9. Where a debtor signs a Trust Deed, how long after the date of signing do creditors have to lodge objections to the Trust Deed becoming protected?**
- a) Within 5 weeks of the date of signing of the Trust Deed
  - b) Within 5 weeks of the receipt of notification circular from the trustee
  - c) Within 5 weeks of the notice appearing in the Edinburgh Gazette
  - d) Within 5 weeks of the notice appearing in the Register of Insolvencies
- 10. Which one of the following statements for a partnership business (firm) is false?**
- a) The partners in a partnership business are jointly liable for all the debts of the firm
  - b) Where there is no partnership agreement the Partnership Act 1890 applies
  - c) A partner who settles a debt of the firm personally is entitled to a contribution from the other partners
  - d) Each partner's liability is limited in accordance with their profit share



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Questions 11 – 15 are 2 mark questions

11. Where a statutory meeting is held in a sequestration, please state the timescales the trustee must adhere to for both calling the meeting and notifying all relevant parties.

(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.

(2 marks)



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13. If one of the partners of a partnership business, which is governed by the Partnership Act 1890, is sequestrated briefly explain the effect on the partnership business if it is not subject to insolvency proceedings.

(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. Briefly state the actions to be taken by a trustee on completion of a Trust Deed in order to receive his discharge.

(2 marks)

Questions 16 – 20 are 4 mark questions

16. Your manager has passed to you various items of paperwork in relation to a new Trust Deed to deal with, including an unpaid invoice from the trustee's agent for £600 in relation to work undertaken prior to the Trust Deed being signed.

- a) What should a trustee consider before making a payment to an agent for work carried out prior to a Trust Deed being signed?

(2 marks)

- b) What information regarding the agent's fee should be disclosed to the creditors?

(1 mark)

- c) How should the payment to the agent be regarded and treated if the agent is associated to the trustee in terms of BA Section 74?

(1 mark)



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17. What is the role of the Accountant in Bankruptcy in Scotland?

(1/2 mark for each valid point, max 4 marks)

18. State the main disabilities or restrictions that apply to an individual subject to an Award of Sequestration and advise if these same restrictions apply to an individual who has signed a Trust Deed that has subsequently become protected.

(4 marks)





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19. Outline the procedure to be followed by a trustee in a sequestration in order to obtain approval for his remuneration and the bases on which his remuneration may be fixed.

(4 marks)

20. Name the grounds for a Sheriff to grant an application for a Bankruptcy Restriction Order.

(1/2 mark for each valid point, max 4 marks)

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

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21. 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 1<sup>st</sup> 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.



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- 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.

- (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)

22. 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)

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

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23. Mr Lemon is sequestrated on 31 March 2011 on a petition presented to Court on 5 February 2011 by the local council for unpaid business rates.

Mr Lemon is 58 years old and for a number of years has been running a small stationery business from his solely owned shop premises.

Mr Lemon came into your office immediately after the award of sequestration and told your principal that at his age he was going to retire on his pension and the shop is finished. He handed the keys over to your principal and said he was "off on a break".

**Requirement:**

**Outline the steps that have to be taken to deal with the stock in the premises.**

**(8 marks)**

**Prepare a briefing note for your principal on how you would propose to dispose of the shop premises.**

**(7 marks)**

24. Your principal has been contacted by an individual in financial difficulties. The individual was previously a sole trader and carried on business as a landscape gardener and he wants to avoid sequestration at all costs. He now works for a large gardening company and is unable to pay the outstanding debts from his business. He wishes to sign a Trust Deed which he hopes will become protected.

Your principal has been asked if he will act as Trustee and prepare the paperwork for creditors with a view to the Trust Deed becoming protected.

Your principal has limited experience of Trust Deeds but is aware that the procedures are subject to SIP3A and to the Protected Trust Deed (Scotland) Regulations 2008. You have been asked to prepare a memo for your principal to use in the initial meeting with the debtor which covers the following points:

**Requirement:**

- a) **Explain whether or not the debtor is capable of signing a Trust Deed.**  
**(2 marks)**
- b) **What steps have to be taken before your principal can satisfy himself that he is able to act as Trustee for this individual?**  
**(1 mark)**
- c) **What method should your principal use to obtain and record the information required to prepare the Trust Deed proposals?**  
**(1 mark)**
- d) **What information/documentation does your principal have to provide to the debtor both at the meeting and following the meeting?**  
**(1/2 mark for each valid point max 5 marks)**



Your principal has agreed to act as Trustee and the debtor has now signed the Trust Deed. The relevant notice has been placed in the Edinburgh Gazette.

**Requirement:**

**Please list the documents that need to be sent to creditors by the Trustee following publication of the notice in the Edinburgh Gazette.**

**(1/2 mark for each correct document max 6 points)**

25. Harry and Emily, a married couple, have been carrying on business in partnership from leasehold premises as a health and fitness studio known as Henerz. They have run into financial difficulties, both as individuals and as a business and have decided to present a debtor's application for the sequestration of the partnership with the concurrence of one of their creditors who is owed £5,000. They will also present separate debtor applications as individuals.

They have the following assets and liabilities:

- Book debts totalling £4,600 of which £3,000 is considered collectable;
- Fitness equipment - cost £40,000 and estimated to realise £17,000. The equipment is subject to outstanding finance costs of £12,000 which are secured;
- Stock of health and beauty materials estimated to realise £2,500;
- Cash in the business bank account of £800;
- Business premises lease not estimated to have any realisable value;
- Jointly owned matrimonial home with an open market value of £270,000 which is subject to a mortgage with Halifax of £180,000;
- Harry owns a BMW car with an estimated realisable value of £10,000. He also has motorbike worth £1,200 which he will be using to commute to work;
- Emily owns a horse which cost £8,000 and is now expected to be worth in the region of £12,000. In addition the tack is expected to realise £2,000;
- Emily also owns a small car with an estimated realisable value of not more than £1,500;
- There are PAYE and NIC liabilities for the business totalling £7,500 as well as £4,000 outstanding for VAT;
- The only money outstanding to the two employees is holiday money totalling £3,000 each. The partners have made sure the employees' wages, notice entitlement and modest redundancy entitlement were paid when they ceased trading last week;
- The landlord for the business premises is owed £8,000 and it is thought likely he will not be able to re-let the premises for a year. The annual rent and service charge is £32,000;
- There are business trade creditors totalling £54,000;
- Harry has personal borrowings totalling £6,800 and a credit card bill of £8,900;
- Emily borrowed £15,000 (unsecured) from her parents to buy the horse and other items including entrance fees for horse eventing competitions, car maintenance costs and other living expenses. Her parents are currently owed £13,500.

The following costs are incurred:

- Trustee's costs and fees for partnership estate - £9,500
- Trustee's costs and outlays for Harry's estate - £6,000
- Trustee's costs and outlays for Emily's estate - £8,000



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- In addition, the legal and agents fees for selling the matrimonial home totalled £5,000

Assume there are no other costs. Also assume the house will sell for £270,000 and the mortgage balance is as shown above.

**Requirement:**

**Prepare an estimated statement of affairs for the partnership and two individual estates. Any assumptions should be clearly stated.**

**(15 marks)**