

**INSOLVENCY PRACTITIONERS ASSOCIATION****CERTIFICATE OF PROFICIENCY IN PERSONAL INSOLVENCY
SCOTTISH PAPER****Examination 15 June 2012**

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 2012.

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' and the 'Regulations' are respectively to the Bankruptcy (Scotland) Act 1985 and Protected Trust Deed (Scotland) Regulations 2008 as amended by The Protected Trust Deeds (Scotland) Amendment Regulations 2010
References to SIPs are to Statements of Insolvency Practice.

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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. In which of the following situations would an Insolvency Practitioner be unable to provide a consent to act where a debtor wished to submit an application for his/her own sequestration?

- 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 only source of income is benefit based

3. Once the DAS Administrator has registered an intimation of a Debt Payment Plan (DPP) on the DAS Register, how long is the debtor protected from creditor action before the DPP proposal has to be completed?

- a) 8 weeks
- b) 4 weeks
- c) 6 weeks
- d) 10 weeks



4. Where a Bankruptcy Restriction Order is in force, which one of the following statements is not true?

- a) You can act as the director of a limited company or take part in its formation, promotion or management without permission from the court
- b) You must disclose to a credit provider that you are subject to bankruptcy restrictions if you, either alone or jointly with another person wish to get credit of more than £500.
- c) You cannot be a member of Parliament, a Justice of the Peace or a school governor in England & Wales
- d) You must disclose to anyone you wish to do business with the name (or trading style) under which you were made bankrupt

5. Reports to creditors in a Protected Trust Deed must what?

- a) Cover a six month period
- b) Cover a 12 month period from the date the Trust Deed is granted
- c) Be issued within two months of the period end
- d) Be posted on the Trustee's website

6. Which of the following statements is true when a Trust Deed has been granted by a partnership?

- a) The partners are not protected from bankruptcy for their personal debts
- b) The majority of partners must consent to the Trust Deed being granted
- c) Insolvent partners do not need to grant separate Trust Deeds if they wish to include their personal assets and liabilities in a process
- d) A Trust Deed can only be granted by a partnership – not a limited partnership



- 7. What is the 'relevant time' period for a transaction that may be challenged as a gratuitous alienation under s.34 of the Act against an associate of the debtor?**
- a) 2 years immediately preceding the date of sequestration
 - b) 5 years immediately preceding the date of sequestration
 - c) 6 months immediately preceding the date of sequestration
 - d) 120 days immediately preceding the date of sequestration
- 8. Which one of the following are not entitled to view the claim forms lodged with a Trustee?**
- a) A creditor who has submitted a claim form
 - b) A person acting on behalf of a creditor who has submitted a claim form
 - c) The debtor
 - d) A creditor who has a claim but has not yet lodged it
- 9. Once a Trustee under a protected Trust Deed has been discharged, for what period must he retain the documents specified in Schedule 2 of the Regulations?**
- a) Twelve months
 - b) 2 years
 - c) Three months
 - d) 6 years
- 10. A Bankruptcy Restriction Order may only be granted by which one of the following?**
- a) Trustee in a Trust Deed
 - b) Trustee in a Sequestration
 - c) The Court
 - d) The Accountant in Bankruptcy



The following questions are worth 2 marks

11. What does an authorised person have to do before agreeing to sign a Certificate for Sequestration?

(2 marks)

12. What steps must a Trustee take when rejecting, either in part or in full, a claim form lodged in a sequestration estate?

(2 marks)



13. Give details of the timescales for presenting a petition for recall of sequestration

(2 marks)

14. Give a brief description of the term “diligence” and then list the various forms of diligence available

(2 marks)



Candidate Number.....

15. What are the functions of the DAS Administrator?

(2 marks)



The following questions are worth 4 marks

16. Provided a debtor is habitually resident in Scotland and is not an undischarged bankrupt, or subject to a Protected Trust Deed which has not failed, name four other conditions to be met for a debtor to have a DPP approved under the Debt Arrangement Scheme.

(4 marks)

17. Apart from the power to require the debtor to deliver assets or documents under section 18 of The Act, name four other powers of the Interim Trustee exercisable without sanction

(4 marks)



Candidate Number.....

- 18. Who is entitled to apply to the Sheriff for an order for the public examination of a bankrupt or of a relevant person concerning his affairs, dealings and property and the causes of failure and what is the timescale for submitting the application?**

(4 marks)

- 19. What information is required to be given in a Statutory Demand?**

(4 marks)



Candidate Number.....

20. What insolvency options are available for a creditor to pursue who has an unpaid debt from a partnership business?

(4 marks)

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

21. An Award of Sequestration was granted against John Smith on 16 February 2011 following a petition presented by HM Revenue & Customs, the date of sequestration for creditors' claims in 3 January 2011 and you were appointed as Trustee. No commissioners have been elected.

You have now progressed the sequestration to a position where it can be closed following a distribution to creditors. The debtor did not co-operate and his wife defended the action to sell the jointly owned matrimonial home, albeit no costs were awarded against her.

The house was sold for £187,500 and after paying the costs of sale of £5,600 and discharging the outstanding mortgage of £105,000 and a valid second security 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 as joint owner.

The 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 Part 3 and Schedule 2 of the Debt Arrangement and Attachment (Scotland) Act 2002.

The non-VATable payment through the sequestration was the Bordereau of £180. Payments for statutory advertising of £150 and legal fees of £8,400 all included VAT. The petitioning creditor's costs were £1,850.

Your outstanding time costs are £10,111.50 incurred over 90 hours at an average rate of £112.35 per hour. Your Category 2 disbursements are £125 for printing and photocopying and £85 for mileage.

You have received and agreed 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 VAT.

Requirement:

- a) **Calculate the Fee payable to the Accountant in Bankruptcy. Show your full workings. (4 marks)**
 - b) **Prepare your Receipts & Payments Account for submission to the Accountant in Bankruptcy. (5 marks)**
 - c) **Prepare a Scheme of Division to be submitted with your Receipts & Payment Account and showing the dividend payable to each class of creditor. Show your full workings. (6 marks)**
- (Total 15 marks)**



22. Your principal is acting as Trustee for Sharon following a creditor's petition. Sharon has not co-operated and mail sent to her last known address has been returned. On checking the Register of Insolvencies, you discover that she signed a Trust Deed in favour of Smith & Co two weeks before sequestration was awarded. You contact the Trustee at Smith & Co and discover he has sold a car belonging to Sharon and is in the process of surrendering an insurance policy.

Requirement:

- a) Draft a letter for your principal to send to Smith & Co setting out your claim to the assets. (6 marks)**

Smith & Co advise they have incurred time costs of £1,500 and have paid a referral fee of £900 to a debt management company. They have also advised that Sharon is working and the Trust Deed was based on her ability to pay a substantial contribution each month, although Sharon has stated to your office – now that she has started to co-operate – that she has no disposable income.

Requirement:

- b) Draft a note for your principal setting out how to treat the time costs and expenses incurred by Smith & Co and cite the relevant authority which governs such matters. (5 marks)**
- c) Draft a letter for your principal to send to Sharon outlining the powers of the Trustee to investigate her post appointment income and to obtain a contribution to the sequestrated estate. (4 marks)**
(Total 15 marks)

**PART C****ONLY TWO QUESTIONS IN THIS SECTION ARE 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 decree 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 declared 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 decree who was previously a friend who had supplied her with saddles and other equipment and with whom Gail had built up a debt of £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 petition for sequestration 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. The total estimated value of these assets was £30,000. Because she was going to be sequestrated, it was agreed that her husband would be the sole director and shareholder of the company. The company became the trading vehicle for Gail's business and she is now an employee. After the sequestration is over, Gail believes the shares could be transferred to her so she would have the benefit of the company assets.



Requirement:

- a) **Your principal has been appointed trustee, prepare a note setting out how each potential asset should be dealt with and give your reasons (i.e. quote the relevant legislation). (8 marks)**

- b) **What arguments could you expect to be raised by the parties who received assets from Gail? (5 marks)**

- c) **Calculate the potential amount to be claimed from Gail's husband in connection with the transfer of ownership of the matrimonial home. What could her husband claim to mitigate the amount payable? (2 marks)**
(Total 15 marks)



24. You have been asked to assist your principal with a meeting he is having with a debtor who is in monetary difficulties and has indicated he would like to sign a Trust Deed but he does not want his home to be included as an asset.

Requirement:

- a) **What constitutes a debtor's home per The Regulations? (4 marks)**
 - b) **What is required to allow the exclusion of the debtor's home from a proposed Trust Deed? (4 marks)**
 - c) **How does exclusion of the debtor's home affect the rights of a secured creditor? (4 marks)**
 - d) **What effect does the debtor's discharge have on a secured creditor who has agreed to be excluded from the trust deed? (1 mark)**
 - e) **What debts would the debtor still be liable for once he has received his discharge from the trust deed? (2 marks)**
- (Total 15 marks)**



25. Your principal has been contacted by a former colleague, Simon Edwards, who runs a general accounting practice which does not have any qualified Insolvency Practitioners. Simon is asking for some information to pass onto one of his clients, Bert Tweedie, who runs a small business employing 2 long standing members of staff. Bert wishes to retire, however he is unable to repay his bank loan as well as other debts and is looking for advice on how he can deal with the business and start to enjoy his retirement.

Requirement:

- a) **Draft a note for your principal to send to Simon Edwards setting out the further information that will be needed before specific advice can be given to Bert. (3 marks)**

- b) **Notwithstanding that further information is required, prepare a note setting out the options available to Bert. (10 marks)**

- c) **What are the employees entitled to claim if Bert ceases to trade without giving them notice, please state whether the various claims would be preferential or ordinary and how would the claims be met if Bert did not have enough money in his business bank account? (2 marks)**

Note The candidates are not required to give the ERA current weekly limit. (Total 15 marks)