

INSOLVENCY PRACTITIONERS ASSOCIATION

CERTIFICATE OF PROFICIENCY IN PERSONAL INSOLVENCY

Examination – 10 June 2011

PERSONAL INSOLVENCY

(3 HOURS)

Part A: All questions to be answered

Part B: All questions to be answered

Part C: Two 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 2011.

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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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 Which one of the following is a provable debt in bankruptcy proceedings in accordance with the Rules?

- a) A parking fine
- b) Monthly maintenance assessment payments
- c) Confiscation order under proceeds of Crime Act 2002
- d) Maintenance assessment lump sum award

2 If an Interim Order is in place for a proposed IVA, how many days prior to its expiry should the Nominee lodge his report to Court?

- a) 2 business days
- b) 5 business days
- c) 2 days
- d) 5 days

3 Which of the following is not a formal requirement of the Act which the Court must be satisfied with before making an Interim Order for a proposed IVA ?

- a) The debtor intends to make a proposal to his creditors
- b) On the day of the application the debtor was an undischarged bankrupt or able to petition for bankruptcy
- c) No previous application for an Interim order has been made in the preceding 12 months
- d) The major creditor(s) have indicated its/ their willingness to consent to the proposed IVA

4 In accordance with the Rules when a trustee issues a notice of intended dividend, how long after the last day for proving should the trustee declare that dividend?

- a) 14 days
- b) 28 days
- c) 1 month
- d) 2 months

5 In accordance with Schedule 5 of the Act which one of the following powers of a trustee does not require sanction?

- a) To carry on the business of a bankrupt
- b) To sell the goodwill and book debts of a bankrupt's business
- c) To bring legal proceedings relating to a bankrupt's property
- d) To compromise debts due to the bankruptcy estate

6 For the purposes of a Debt Relief Order, what is the prescribed amount of the maximum value of a vehicle which a debtor is entitled to retain?

- a) £1,000
- b) £2,000
- c) £4,000
- d) No more than the cost of a reasonable replacement

7 A trustee in bankruptcy 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 intends ceasing to be a licensed Insolvency Practitioner
- 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 proposes an IVA and no Interim Order is obtained, how long after the Nominee receives the proposal should the Nominee submit a report to Court?

- a) Forthwith
- b) 7 days
- c) 10 days
- d) 14 days

9. If a creditor has not received notice of a meeting to consider a debtor's proposals for an IVA, how long does that creditor have to lodge an appeal against the decision of the meeting?

- a) 28 days from the date of the meeting
- b) 28 days from becoming aware of the meeting having taken place
- c) There is no right of appeal as the creditor is not bound
- d) 28 days from the date of the Chairman's report to Court

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 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

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. In IVA proceedings, who may chair the creditors' meeting to consider the debtor's proposals? (2 marks)
12. Set out two grounds on which the Official Receiver may revoke a Debt Relief Order which has been made. (2 marks)
13. In accordance with the Rules within what period should a trustee's remuneration be determined by either a creditors' committee or a meeting of creditors? If not so determined, how will it be fixed? (2 marks)
14. If one partner only of a partnership business, which is governed by the Partnership Act 1890, is made bankrupt, briefly explain the affect on the partnership business if it is not subject to insolvency proceedings. (2 marks)
15. Briefly state the Supervisor's reporting requirements on the successful completion of an IVA. (2 marks)

NOTE: 4 mark questions

16. Certain types of assets are excluded from a bankrupt's estate such as tools, books, vehicles and equipment required for work or personal use. Set out four types or categories of assets apart from these which do not form part of a bankrupt's estate. (4 marks)
17. What are the powers and duties of a Supervisor of a protocol compliant IVA as set out in part V of the protocol?
(1/2 mark for each valid point, max 4 marks)
18. State four disabilities or restrictions that apply to an individual if made bankrupt. (4 marks)
19. On what bases may a trustee's remuneration be fixed and what matters should creditors have regard to? (4 marks)
20. How and for how long may a protocol compliant IVA be extended beyond the period set out in the proposal? (4 marks)

PART B

Both questions in this section are compulsory

21. Rachel (age 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.

Requirement:

Advise Rachel on her main personal insolvency options. In particular you should comment on bankruptcy, IVAs and Debt Management Plans. Also comment on whether a Debt Relief Order may be an appropriate option. Compare and contrast the different insolvency solutions, taking into account Rachel's financial circumstances. (15 marks)

22. Mike, who has been running a business on a self-employed basis as a motorbike mechanic, has recently been made bankrupt and your principal has been appointed trustee. You have been asked to administer the case and have ascertained the following information:

The bankruptcy order was made 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 November 2010 and there were two adjournments before the bankruptcy order was made. 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 they did not make a formal declaration of trust 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 couples' intention that the property be owned by them together and accordingly it was purchased by them as joint tenants. 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.

Requirement:

Prepare a memo to the trustee stating with reasons what interest you believe Mike has in the matrimonial home. 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. Clearly state any assumptions. (6 marks)

Also 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)

Finally, 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.** Mr Lemon is declared bankrupt on 31 March 2011 on a petition presented to Court on 5 January 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 greengrocery business from his solely owned shop premises.

Mr Lemon immediately attended at the Official Receiver's office and told the Official Receiver that at his age he was going to retire on his pension and the shop is finished. He handed the keys over to the Official Receiver and said he was "off on a break".

The Official Receiver decides not to call a meeting of creditors but instead to arrange a Secretary of State appointment of a trustee in bankruptcy. The Official Receiver's office contacts your principal about the appointment.

Requirement:

What is the role of the Official Receiver and what functions, powers and duties does the Official Receiver have in respect of the bankrupt, his estate and the creditors? (10 Marks)

What potential ethical matters should your principal consider before consenting to act as trustee (5 marks)?

- 24.** Your principal has been contacted by an individual in financial difficulties. The individual carries on business as a landscape gardener as a sole trader and wants to avoid bankruptcy at all costs. He trades from leasehold premises and has 3 employees. He wishes to propose an Individual Voluntary Arrangement (IVA). As he is proposing to continue running the business, it is has been concluded that the IVA should not be subject to the IVA Protocol.

Your principal has been asked to act as nominee and assist in the preparation of the proposal to be put to creditors.

Your principal has limited experience of IVAs but is aware that the procedures are subject to SIP3. 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:

- (i) What are the three tests as set down in SIP3 from the Greystoke v Hamilton-Smith case? (3)**
- (ii) If the tests are satisfied, what matters should your principal as nominee address in her comments to be annexed to her report? (8)**
- (iii) Your principal is aware that SIP3 sets out four matters that as nominee she should consider whilst forming her opinion as to the appropriate method of dealing with the individual's affairs, as distinct from consideration of the proposal itself. What are these? (4)**

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 and have decided to present a joint bankruptcy petition, pursuant to which they will both be bankrupt and the trustee will be required to wind-up the partnership business.

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, £800;
- Business premises lease not expected to have any realisable value;
- Jointly owned matrimonial home with an open market value of £270,000 subject to a first mortgage with C & G of £180,000;
- Harry owns a BMW car with an estimated realisable value of £10,000. He also has a 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 of VAT outstanding;
- 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 arrears of £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 borrowing liabilities totalling £6,800 and a credit card bill of 8,900;
- Emily borrowed £15,000 (unsecured) from her parents to pay for 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:

- Partnership winding-up expenses (OR and Secretary of State): £4,000
- Trustee's costs and fees for partnership estate: £9,500
- Harry's estate: (OR and Secretary of State): £6,500
- Trustee's costs and fees for Harry's estate: £6,000
- Emily's estate: (OR and Secretary of State): £7,000
- Trustee's costs and fees for Emily's estate: £8,000
- 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 outcome statement for the partnership estate and the two bankruptcy estates. Any assumptions should be clearly stated. (15 marks)