

INSOLVENCY PRACTITIONERS ASSOCIATION
CERTIFICATE OF PROFICIENCY IN PERSONAL INSOLVENCY SCOTLAND

Examination 11 June 2010

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 1 January 2010.

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).

Reference to PTD Regulations are "The Protected Trust Deeds (Scotland) Regulations 2008.

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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

1. Which of the following is not a power of the Trustee under BA section 39?
- a) Carry on or close down any business of the debtor
 - b) Bring, defend or continue any legal proceedings relating to the estate of the debtor
 - c) Apply to the Sheriff for an application to enter the house where the debtor resides
 - d) Effect or maintain insurance policies in respect of the property of the debtor
2. In terms of PTD Regulation 17, the trustee must send to the debtor, each creditor and Accountant, a statement of his accounts in administering the trust deed within what period?
- a) At intervals of not more than 6 months, beginning with the date the trust deed is granted
 - b) At intervals of not more than 12 months, beginning with the date the trust deed is granted
 - c) At intervals of not more than 18 months, beginning with the date the trust deed is granted
 - d) At intervals of not more than 24 months, beginning with the date the trust deed is granted
3. Where the requisite value of creditors under BA section 21A(5) request that the Trustee call a Statutory Meeting of Creditors, within what period should the meeting be called?
- a) 14 days from receiving the notice from creditors requesting that a meeting be held
 - b) 28 days from the original notice to creditors of the intention not to call a meeting
 - c) 60 days from the date of the award of sequestration (or such other date that the Sheriff, on application, will allow)
 - d) 28 days from the expiry of the period within which the original notice to creditors had to be given
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4. Which one of the following assets would be included in a sequestrated estate?
- a) Property held by the debtor on trust for a third party
 - b) A car valued at £950 to enable the debtor to commute to work and make a contribution
 - c) Rights under a personal pension policy
 - d) An inheritance from the debtor's late mother's estate
5. Other than the in the Statutory Meeting of Creditors, what minimum period of notice should be given to call a Meeting of Creditors?
- a) 7 days
 - b) 14 days
 - c) 21 days
 - d) 28 days
6. What is the maximum length of time for which a debtor may be subject to an order by the Sheriff to make a contribution from income?
- a) 3 years from the date of sequestration
 - b) 5 years from the date of sequestration
 - c) 3 years from the date of the order
 - d) 5 years from the date of the order
7. Which Schedule of the BA deals with calculating a secured claim in a Trust Deed?
- a) Schedule 1
 - b) Schedule 3
 - c) Schedule 5
 - d) Schedule 6

8. Following receipt of a an Offer of Composition under Schedule 4 of BA, what step should the Trustee first take?

- a) Report to the creditors the terms of the offer
- b) Advertise notice of the offer in the Edinburgh Gazette within 14 days
- c) Report to the Court and seek consent to hold a creditors meeting
- d) Submit the offer along with a report to the Commissioners (or if none, to the Accountant in Bankruptcy)

9. Which of the following may not sign a Trust Deed?

- a) An individual subject to a sequestration in the five years prior
- b) An individual subject to an approved Debt Payment Programme
- c) A partnership
- d) An individual with over half their debts incurred out with the jurisdiction of the Court of Session

10. Where the Trustee is a Sequestration is not the Accountant in Bankruptcy, which statutory form is used to give Notice of Abandonment of Heritable Property?

- a) Form 20
- b) Form 21
- c) Form 22
- d) Form 23

11. Your partner was recently appointed as Trustee in the Sequestration of Mr Iommi trading as Sabbath Records. Since his appointment you have received a number of calls from creditors claiming Retention of Title (“ROT”) to stock supplied to Sabbath Records. What are basic principals to deal with any stock subject to ROT and/or ROT claims?

(2 marks)

12. Who may be requested by the trustee to attend a private examination under s44 of the BA? If the trustee makes such an application to the Sheriff and an order is made, within what time period must the private examination take place?

(2 marks)

13. List criteria to be met to be eligible for the Scottish Government Mortgage to Rent scheme

(2 marks)

14. Outline the proceedings to be followed at the Statutory Meeting of Creditors in a Sequestration prior to the trustee vote, as referred to in BA section 23.

(2 marks)

15. a) When setting an amount to be paid by the debtor in terms of s32(2) of the BA, what factors will the Sheriff take into consideration?

(1 mark)

- b) In terms of s33 of the BA, which assets shall not vest in a trustee?

(1 mark)

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)

17. In terms of the PTD Regulations:-

- a) **Prior to the debtor granting a trust deed, what must the trustee advise the debtor that granting the trust deed may result in?**

(2 marks)

- b) **The 5 week objection period has expired with no objections being received. What documentation must be sent to the Accountant for registration in the register of insolvencies.**

(2 marks)

- 18. Mr McEnery is dismissed as a senior sales manager of Tea Junction (a partnership) on 28 February 2010 because of the insolvency of the partnership. He is owed salary from 1 February 2010 onwards. Mr McEnery's gross salary is £600 a week. Under his contract of employment he has an annual holiday entitlement of 36 days. The business's holiday year runs from 1 January, and Mr McEnery has taken 1 day's holiday in 2010.**

Assuming a Government weekly limit of £380, calculate the respective preferential and unsecured claims of the Redundancy Payments Office and Mr McEnery arising from Mr McEnery's claims for arrears of wages and holiday pay, gross of tax and National Insurance deductions.

(4 marks)

19. In terms of s56B of the BA, what kind of behaviour on the part of the debtor will the Sheriff take into account when granting an application for a bankruptcy restrictions order?

(4 marks)

20. What steps may a trustee take to avoid the family home being reinvested in the debtor?

(4 marks)

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

21. John Smith is a sole trader of Be Tools, a hand tool manufacturer and was sequestrated on 1 May 2009.

From his books and records and discussion with Mr Smith, your principal has ascertained the following information:

- Mr Smith owns his house in Stirling. A recent professional valuation indicates that the market value of the property is £275,000.
- The business currently holds stocks of finished goods which are estimated to realise £30,000 at public auction and stocks of raw materials estimated to realise 20% of their book value (£42,000).
- The book debts are all factored with R Star Factors Limited. The sales ledger presently stands at £78,000. Mr Smith has estimated that after making a provision for a bad debt of £15,000, 60% of the remaining debts will be realisable. R Star Factors Limited are owed £35,000 against the ledger.

- Professional Agent's valuations have been obtained for the remaining business assets as follows:

Motor Vehicles	£14,000
Fixtures and fittings	£8,000
Plant and Machinery	£24,000

- In addition there are two cars that are subject to finance with J Lemon Finance Limited. These vehicles have been valued by the agents at £5,000 and £7,000 with outstanding finance of £6,000 and £3,000 respectively. The finance agreements are not consolidated.
- Mr Smith has personal debts from credit cards totalling £15,000.
- Trade creditors total £230,000.
- In addition, Mr Smith has a mortgage of £200,000 and the business has an overdraft of £56,000, both with Harrison Bank plc. The Standard Security held by Harrison Bank Plc is for "all sums due, or to become due".
- Mr Smith's wife is owed £50,000 in respect of loans made to the business.
- HM Revenue & Customs are owed £7,200 in respect of unpaid VAT and £14,600 in respect of unpaid PAYE/NIC contributions.

- Sums owed to employees on cessation of trade have been calculated as follows:

Wages arrears – (5 employees owed 6 weeks wages)	£30,000
Redundancy pay	£29,000
Pay in lieu of notice	£23,000
Holiday pay	£15,000

- (a) Your principal has asked you to prepare a statement of affairs suitable for dispatching to creditors.**

(10 marks)

It is now 1 year since your appointment. All assets have been realised in line with the estimated Statement of Affairs figures, with exception of the property which has still to be sold.

In addition to the statutory outlays, the following costs have been incurred:

- Trustee's fees of £7,000 have been approved by the Accountant in Bankruptcy and drawn.
- Legal Fees of £4,000 have been paid in respect of the property.
- The vehicles, stock, fixtures and fittings and plant & machinery were sold at auction in line with the Statement of Affairs figures. Your agent's fees in respect of these are 10% of the sums realised.

- (b) Prepare an up to date Receipts and Payments account for the administration of the sequestration to date (ignore VAT).**

(5 marks)

22. An award of sequestration was made against Bob Bobbins on 1 April 2010 on a petition presented to Court by H M Revenue & Customs and your principal was appointed trustee. The Warrant to Cite was 1 March 2010.

Bob traded as a painter and decorator but ceased to trade following the award of sequestration and now works at a large DIY store.

The following matters have been ascertained during a meeting with the debtor.

- 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 Paul in July 2009, and his father in February 2010, 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 20 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 that the balance outstanding is £100,000. The property is registered in the sole name of Bob's wife and has been since January 2008. 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 property".
- Bob previously owned a second property which he sold to his brother in July 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 details and to provide him with a memo to advise him as follows:

- (a) **Whether it is likely that any of the above transactions could be overturned and, if so, identify the transaction which appears to be involved. Also, what evidence the trustee is likely to need to pursue any such claims and what he is likely to need to be able to demonstrate to the court.**

(12 marks)

- (b) **If any of the above matters were to proceed to litigation, what additional formal/practical requirements should be dealt with before litigation is commenced?**

(3 marks)

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

- 23.** Nick and Cameron Brown (brothers) run the Station Inn bar as a Partnership, albeit without any formal partnership agreement. Nick takes the leading role in the day to day management of the business. Cameron is an accountant and his role in the business is to take care of the bookkeeping.

The Station Bar is leased and Nick lives in a flat above the bar which forms part of the lease. He has no assets in his own name. Cameron has a successful career as an accountant in his own right, and his assets are estimated to be worth £300,000.

The Brewery has yesterday obtained decree against the Partnership only for non-payment of supplies amounting to £4,966.

The local Cash & Carry has served a Statutory Demand for payment of £2,875 on Nick Brown . Nick Brown disputes the amount due however did nothing with the Statutory Demand when received (4 weeks ago).

The remainder of the Partnership Ordinary Unsecured Creditors are estimated at £75,000.

(a) Identify for each of the three entities:

- **The position with their apparent insolvency**
- **What risks there are of creditors presenting a sequestration petition**
- **Whether a debtor application for Sequestration can be made or a Trust Deed is possible.**

(12 marks)

It is estimated that in a sequestration of the Partnership, the Ordinary Unsecured creditors would receive a dividend of 25p in the £. Cameron Brown is concerned as to how the balance of unpaid creditors will affect him.

(b) Set out on a file note the extent and basis for Cameron Brown's liability for the partnership's debts, and the rights of the partnership creditors.

(3 marks)

24. (a) The Insolvency Code of Ethics sets out 5 fundamental principles which Insolvency Practitioners and their staff should abide by. What are these principles? Your answer should briefly explain what is meant by each principle.

(10 marks)

- (b) If a trustee under a protected trust deed presents a petition against the debtor and an award of sequestration is made, 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 the sequestration?

(1 marks)

- (c) An Insolvency Practitioner wishes to act as trustee in the sequestration of a debtor's estate but a partner in his firm is acting as liquidator of a company which has a claim against the debtor. This claim is disputed by the debtor. 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)

25. Dirk Forsythe has just entered into a Debt Management Plan and pays into it his monthly surplus of income of £450. His unsecured debts total to £38,000, which is made up entirely of Credit Cards with a typical interest rate of 1.5% per month. He owns his house which has a value of £150,000, and he has a capital and repayment mortgage with £140,000 outstanding.

Mr Forsythe has now found out about Trust Deeds from internet based research and has approached your firm for advice. He is particularly concerned about the treatment of his house. Your firm's fees for administering a Trust Deed together with outlays, VAT, and Accountant in Bankruptcy charges would amount to £5,200.

- a) **Following your meeting with Mr Forsythe, prepare a memo for your Insolvency Practitioner outlining the benefits and implications for Mr Forsythe and his creditors, including the treatment of his property, in each of the following situations:**
- **His current Debt Management Plan**
 - **A Trust Deed**
 - **A Debt Payment Program approved under the Debt Arrangement Scheme.**

(14 marks)

- b) **Which Advisory Bodies could Mr Forsythe have contacted for assistance?**

(1 mark)