



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

Examination 2 June 2023

INSOLVENCY

(3 HOURS)

- Part A:** All questions to be answered (10 x 1 mark questions)
Part B: All questions to be answered (5 x 2 mark and 5 x 4 mark questions)
Part C: All questions to be answered (2 x 15 mark questions)
Part D: Two from three questions to be answered (3 x 15 mark questions)

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 all questions in Parts B, C and D separately on the answer 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 1st January 2023.

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 their answer papers using the treasury tag provided.

Candidates should remain seated until the Invigilator has collected the tagged question paper and answer papers. 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 (Scotland) Rules 1986 (as amended).

References to the '1985 Act' are to the Bankruptcy (Scotland) Act 1985 (as amended).

References to the PTD Regs are to the Protected Trust Deeds (Scotland) Regulations 2013.
References to SIPs are to Statements of Insolvency Practice (Scotland).

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PART A**MULTIPLE CHOICE QUESTIONS**

THE CORRECT ANSWER TO EACH OF THE QUESTIONS IS TO BE INDICATED BY PLACING A CROSS IN THE APPROPRIATE BOX. ONLY ONE ANSWER IS REQUIRED. THERE IS ONE MARK FOR EACH QUESTION.

1. According to the SIP relating to trust deeds, where the trustee's fees have not been fixed, the trustee should advise creditors of their right to have the accounts audited and fees fixed by the Accountant in Bankruptcy ("AIB"). What period of time should a trustee delay drawing their fee to allow creditors to respond?
- a) 7 days from the end of the accounting period ☐
- b) 7 days from the issue of the correspondence to creditors ☐
- c) 14 days from the end of the accounting period ☐
- d) 14 days from the issue of the correspondence to creditors ☐
2. Where a trustee sells a debtor's investment property, which of the following types of tax is most likely to be payable from the debtor's estate as a result of the sale?
- a) Income tax ☐
- b) Corporation tax ☐
- c) Capital gains tax ☐
- d) Stamp duty land tax ☐
3. In a creditor sequestration, what date should be used when converting a foreign currency claim to pounds sterling. Is it?
- a) The date the sheriff granted the warrant to cite ☐
- b) The date of the award ☐
- c) The date of the appointment of the trustee ☐
- d) The date of the proof of debt submitted ☐
4. Which SIP covers matters concerning trust deeds. Is it?
- a) SIP 2 ☐
- b) SIP 3.2 ☐
- c) SIP 3.3 ☐
- d) SIP 9 ☐
5. What Section in the Act deals with extortionate credit transactions. Is it?
- a) Section 209 ☐
- b) Section 211 ☐
- c) Section 215 ☐
- d) Section 229 ☐

6. What is the maximum number of years that a business debt arrangement scheme ("DAS") can last?
- a) 3 years ☐
 - b) 5 years ☐
 - c) 8 years ☐
 - d) 10 years ☐
7. The trustee must send to every creditor a copy of the trust deed following the date of registration with the Register of Insolvencies. Within what period must the notice be given?
- a) Within 4 business days of registration ☐
 - b) Within 7 days of registration ☐
 - c) Within 10 days of registration ☐
 - d) Within 14 days of registration ☐
8. Within what time limit must a debtor notify their trustee of an acquired asset following sequestration. Is it?
- a) Within 21 days of receiving the asset ☐
 - b) Within 21 days of becoming aware of the asset's existence ☐
 - c) Within 21 days of discharge from sequestration ☐
 - d) Immediately ☐
9. What is the maximum time period for which a debtor contribution can be paid. Is it?
- a) 48 months beginning with the first payment ☐
 - b) Until discharge from sequestration ☐
 - c) Such period as agreed by the debtor and trustee ☐
 - d) 48 months from the date of sequestration ☐
10. How long does a creditor have to submit their claim once the trustee has issued notice inviting claims in a sequestration?
- a) 28 days ☐
 - b) 60 days ☐
 - c) 120 days ☐
 - d) As soon reasonably practicable ☐

PART B

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. List the categories of claim an employee can make upon being made redundant following the appointment of a trustee in a partnership.

½ mark per point up to 2 marks

12. Who can apply for the sequestration of a deceased debtor?

½ mark per point up to 2 marks

13. A creditor has chosen to sue a partnership, rather than the individual partners of the firm. What should the creditor bear in mind when considering this option.

½ mark per point up to 2 marks

14. Whilst an individual is subject to a moratorium, what are creditors restricted from doing?

½ mark per point up to 2 marks

15. Who is eligible to be a commissioner?

½ mark per point up to 2 marks

16. Your principal has asked you to close a case. What final practical steps should you undertake?

½ mark per point up to 4 marks

17. Explain the right a landlord holds in respect of hypothec and the sum that can be claimed by the landlord.

½ mark per point up to 4 marks

18. What is the effect of a trust deed becoming protected?

½ mark per point up to 4 marks

19. What are the advantages of a DAS over a protected trust deed?

½ mark per point up to 4 marks

20. When a trustee in sequestration is replaced, what duties does the original trustee have to undertake, and when.

½ mark per point up to 4 marks

PART C

BOTH QUESTIONS TO BE ANSWERED ON A SEPARATE SHEET OF ANSWER PAPER

- 21. a)** Your principal has been approached by Mark Closebill who is considering entering a trust deed.

Prepare a note explaining what a trust deed is and the advice that should be provided to Mr Closebill before he grants a trust deed.

½ mark per point up to 6 marks

- b)** Following sending out the trust deed to creditors you have received the following responses;

- Loans R' Us confirmed its debt of £5,000, the accompanying letter advises that the creditor accepts the proposed trust deed.
- Mark's sister-in-law, Indi Loot was included in the trust deed at a level of £20,000 and has accepted the proposals of the trust deed in writing.
- CarFinance.com have rejected the proposal in writing. The car is valued at £25,000 and the outstanding finance has been confirmed as £35,000.
- Overdraft.Com, has submitted a claim in the sum of £3,000 + interest of £300. They have advised in writing that they reject the proposals of the trust deed.
- Credit Today has been in touch advising that they reject the trust deed and have submitted a claim for £20,000 which represents half of a £40,000 loan. The paperwork provided is all in the name of Mark's wife, Rose Closebill.
- Other creditors with debts totalling £30,000 have not voted.

Requirement;

Set out a voting schedule to illustrate the current voting position of the creditors and the likely acceptance or otherwise of the trust deed. Explain your treatment of the different creditors.

½ mark per point up to 5 marks

- c)** Outline the procedure and list the information that should be sent to the AIB following the expiration of the 5-week period.

½ mark per point up to 4 marks

Total 15 marks

- 22.** Florence Nightingale (“the Debtor”) was Sequestered on 9 January 2023 by a creditor’s petition. To date, she has not attended an interview with the trustee or provided any information concerning her assets and liabilities. Upon a review of information to date, the trustee has concerns that the Debtor has concealed assets. Following investigations, the debtor has been traced to a property in Edinburgh.

Requirements;

- a)** Detail the obligations that the Debtor has to furnish certain information to the trustee, and what powers the trustee has to obtain this information.

½ mark per point up to 6 points

- b)** The creditor who petitioned for the sequestration of the Debtor has contacted your office to enquire about how the trustee’s investigations are progressing. In the call, the creditor advised the following;

- 1) The debtor owned a property that was sold in March 2020 to her sister.
- 2) From social media posts made by the debtor, it would appear that her father passed away in February 2023, it was noted that her father had a large property portfolio, including properties abroad.
- 3) The creditor has also advised that the debtor recently started a new job at a senior level.
- 4) Again, from social media posts, the debtor has been pictured driving a high-end motor vehicle with a private registration.

In response to the above points, prepare a strategy note for the trustee outlining the investigations that will be required and what remedies are available to the trustee in order to make realisations.

½ mark per point up to 9 marks

Total 15 marks

PART D

TWO OF THE THREE 15 MARK QUESTIONS TO BE ANSWERED ON A SEPARATE PIECE OF PAPER

- 23.** Steven Clark was sequestrated over eighteen months ago, following a creditor's petition. His trustee has realised all of the assets, and has now turned his attention to his share in the debtor's matrimonial home, which he jointly owns with his wife.

The trustee has recently obtained a professional valuation of the heritable property valuing it in the sum of £400,000.

The property is subject to a mortgage of £198,000 owed to Mountain Loans.

Following Steven being sequestrated he vacated the property, however his wife and two children still live in the property.

Mrs. Clark has contacted your office following a letter received from the Trustee. She advised that she has been doing research and understands the property will revest in the Debtor if the property is not dealt with by the Trustee due to it being classed as a family home.

Requirements;

- a) The trustee has asked you to prepare a note, outlining the equity position and an explanation as to what steps should be taken to ensure the property does not revest in the debtor.

½ mark per point up to 6 marks

- b) During the trustee's investigation into Mr. Clark's financial affairs, you note a number of unusual transactions to an overseas bank account. You have yet to discover the identity of the beneficiary of this bank account, but alarm bells are ringing, and despite your numerous requests to Mr. Clark to explain these transactions, he has yet to respond, and it appears that he may have moved abroad.

The trustee is now considering making an application for a bankruptcy restriction order ("BRO").

Your principal has asked you to prepare a note explaining the effect of the BRO, and also the grounds upon which a BRO can be applied for.

½ mark per point up to 9 marks

Total 15 marks

24. Scott Aldebt was sequestrated on 1 July 2021. To date, the trustee has realised all the assets in the estate and is holding funds of £183,000. It is the Trustee's intention to prepare a final scheme of division and distribute the funds in accordance with the Act.

No commissioners have been appointed and the trustee is looking to have their accounts and scheme of division approved. No remuneration has been drawn to date.

Accepted Creditor Claims

• Litigious Lawyers	£30,000
• HMRC - VAT	£45,000
• Bounceback Loan	£47,000
• Loan from Mrs. Aldebt	£50,000

The Trustee's time costs to date are £20,000 and an estimate to close has been suggested of £5,000.

Statutory Interest – 8%
Ignore VAT and AiB Costs

Requirements;

- a) Prepare a note outlining the procedure and timeframes for claiming remuneration in the above sequestration. List the documents that should be prepared for audit by the Accountant in Bankruptcy. Your note should include details of the different basis upon which remuneration can be calculated.

½ mark per point up to 7 marks

- b) Prepare a scheme of division for approval of the trustee in the sequestration of Scott Aldebt.

½ mark per point up to 5 marks

- c) Following the payment of the final distribution a number of creditors' payments have bounced and have been returned to the estate bank account. Advise what the trustee should do in such circumstances.

½ mark per point up to 3 marks

Total 15 marks

- 25.** Following a petition lodged by HM Revenue and Customs your principal was appointed as trustee in the Sequestration of Mr. Fox. Following a recent update to creditors, a disgruntled creditor has contacted your office demanding to view the books and records of Mr. Fox and the trustee.

You have advised the creditor that in terms of Section 210 of the Act, any interested party can inspect the sederunt book.

Requirements;

- a)** Prepare a letter to the creditor explaining what a sederunt book is and the documents that are available for inspection within it.

½ mark per point up to 10 marks

In the report to creditors, it advised that the debtor is exploring the potential recall of his sequestration. The creditor is seeking clarification on 'recall'.

- b)** Prepare a note outlining the grounds of recall and its effect if granted.

½ mark per point up to 5 marks

Total 15 marks