



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

Examination 20 November 2020

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 2020.

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. An individual was successful in applying for a moratorium on 24 April 2020. Based upon the following, when will the moratorium end where a trust deed is signed in the period?
- a) 05 June 2020
 - b) Upon entry of a notice in the register of insolvencies recording that a Trust Deed has been granted
 - c) Upon the trust deed becoming protected
 - d) Upon written notice to the Accountant in Bankruptcy by a creditor
2. Which of the following would not be an associate of Bob as defined by Section 229 of the Act. Is it?
- a) Bob's employee
 - b) Bob's next-door neighbour
 - c) The brother of Bob's civil partner
 - d) A company that Bob owns 100% of the voting shares
3. When convening a statutory meeting in terms of Section 44 of the Act where must the trustee ensure that it is held?
- a) It must be held within the Sheriffdom where sequestration was granted
 - b) It must be held within the offices of the Trustee
 - c) It must be held at a convenient location for the majority of creditors
 - d) It must be determined by the creditors
4. Which SIP provides guidance in respect of trust deeds?
- a) SIP 2
 - b) SIP 3.2
 - c) SIP 3.3
 - d) SIP 6
5. A debtor is required to submit a statement of assets and liabilities to the trustee within how many days after being given notice to. Is it?
- a) 7 days
 - b) 11 days
 - c) 14 days
 - d) 21 days

6. Your principal has just been appointed as replacement trustee in a sequestration. The award of sequestration was made 2 years ago and the debtor was discharged after 12 months of the making of award. Upon review, you note that the income and expenditure provided by the debtor to the previous trustee showed surplus income of £50 per month. You are considering whether to apply for a debtor contribution order (“DCO”). Will this be possible?
- a) Yes, providing you apply for the DCO forthwith
 - b) No, as the surplus income is too low
 - c) No, as the debtor has been discharged
 - d) Yes, as the trustee can obtain an DCO at any time whilst in office
7. A debtor has been assessed for a debtor contribution order using the common financial tool and has requested to retain a contingency. They have been assessed as having a surplus of £250 per month. How much is allowable to be deducted as a contingency?
- a) £20 per month
 - b) £25 per month
 - c) £43.75 per month
 - d) £50 per month
8. The debtor’s interest in their family home ceases to be part of the sequestrated estate and re-vests in the debtor if the trustee does not take one of the steps outlined in Section 112(3) of the Act. At what point in time does the interest re-vest?
- a) The date the debtor receives their discharge from sequestration
 - b) The anniversary of the sequestration
 - c) Three years from the date of the sequestration
 - d) Three years from the date of the trustee’s initial correspondence
9. Within what time limit must a trustee of a trust deed deliver their annual account. Is it?
- a) 14 days
 - b) 28 days
 - c) 1 month
 - d) 6 weeks
10. What Section in the Act deals with unfair preference claims. Is it?
- a) Section 98
 - b) Section 99
 - c) Section 100
 - d) Section 102

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. What are the general functions of a trustee?

½ mark per point up to 2 marks

12. Who can present a petition for recall of sequestration to the sheriff?

½ mark per point up to 2 marks

13. Where a debtor is prescribed to undertake the course of financial education what are the potential modules that may be required?

½ mark per point up to 2 marks

14. Outline what must be done prior to the debtor granting the trust deed to adequately exclude a secured creditor from a trust deed.

½ mark per point up to 2 marks

15. Who may be summoned by the trustee to appear before the court for a private examination and what are the consequences of non-compliance?

½ mark per point up to 2 marks

16. In terms of Section 2(2) of the Act who can apply for the minimal asset procedure and what is the criteria?

½ mark per point up to 4 marks

17. An insolvency practitioner must hold security for the purposes of carrying out his functions. This includes a specific penalty sum in respect of each case where the insolvency practitioner acts. Explain how the specific penalty sum is calculated.

1 mark per point up to 4 marks

18. a) List the types of unsecured debts that a debtor is not discharged from in a sequestration.

½ mark per point up to 2 marks

b) Name the parties who can appeal the decision in respect of a debtor's discharge and who is the appeal made to?

½ mark per point up to 2 marks

Total 4 marks

19. In considering whether to approve or reject a debt payment programme the DAS administrator must take into account what criteria in terms of the DPP being fair and reasonable?

½ mark per point up to 4 marks

20. What are the general effects of a trust deed becoming protected and the effect this has on the rights of unsecured and secured creditors?

½ mark per point up to 4 marks

PART C

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

21. Your principal has been approached by Mrs Fortune (“the Debtor”) who is experiencing financial difficulties. It has been agreed that the best process for her to enter is a trust deed.

Requirement;

Prepare a note for your principal to discuss with the Debtor, clearly setting out the following:

- a) The advice that must be given to the Debtor prior to granting the trust deed, and an explanation of the contribution that will need to be made by the Debtor and how this is calculated.

½ mark per point up to 8 marks

- b) The Debtor entered a trust deed and has been paying her debtor contribution order without missing a payment (£250 per month). It is the intention of the trustee to pay a dividend at the first dividend period which has just passed. To date the trustee has drawn £2,500 excluding VAT of their remuneration.

Explain the dividend periods in a trust deed and the level of dividend that could be paid at the first dividend period. The Debtor’s creditors total £25,000 and it has been agreed to leave a contingency of £500 in the trust deed account.

Ignore all other costs and charges.

½ mark per point up to 7 marks

Total 15 marks

22. Miss Strapped has contacted your principal as she is experiencing financial distress and is unable to pay all of her debts. She lost a tribunal case a few months ago which was brought by one of the employees of her former consulting business. Following this, she stopped trading as a sole trader and has taken on paid employment.

She is keen to avoid sequestration and is particularly worried about losing her home. Her father has offered to make a contribution of £20,000 if this would allow her to avoid sequestration. Your principal thinks that a trust deed ("TD") may be a viable solution and has asked you to compare the outcome in a TD with that of sequestration.

Miss Strapped owns her flat at 7 Garden Mews. A recent valuation has valued the flat at £150,000, and there is a mortgage to Mews Bank PLC of £125,000.

Prior to the difficulties in her business, Miss Strapped splashed out on a new car. She does not need the car to get to work but enjoys taking a drive to the country at weekends to de-stress. You have carried out an online valuation of the vehicle and believe it to be worth around £10,000.

Miss Strapped recently inherited some jewellery from her grandmother which has sentimental value, but also was valued for probate purposes at £3,000.

You have received details of Miss Strapped's income and expenditure and assessed her using the common financial tool and have calculated that she could contribute around £200 per month.

The tribunal award given in favour of the employee was for £18,000 and is fully unsecured. In addition, Miss Strapped still owes creditors from her former business a total of £20,000.

She has received her self-assessment tax bill from HM Revenue & Customs of £22,000, which she has not been able to pay.

Miss Strapped received a loan from her aunt of £1,000 when her business was struggling. The aunt has agreed to write off the debt if the TD is approved but would want to claim as a creditor if Miss Strapped was sequestrated.

Your principal estimates that your firm's fees for dealing with the TD will be £2,500 and 20% of realisations, plus expenses totalling £1,100. In the event that Miss Strapped is sequestrated and a trustee is appointed from a firm like yours, the trustee's fees are likely to be around £20,000 and expenses (including legal and agents' costs) are around £10,000. Expenses include all costs due to the Accountant in Bankruptcy.

Your principal suggests a TD lasting five years may provide a better solution both for Miss Strapped and for her creditors. The TD would be on the basis that:

- The flat is excluded;
- Miss Strapped's father makes the suggested one off contribution to the TD which will essentially purchase the car and the jewellery at market value with the remaining balance being a voluntary contribution. He would not be willing to make any contribution to the sequestrated estate.

Requirement;

Prepare an estimated outcome statement (including predicted dividend) to compare a TD with a sequestration for Miss Strapped. Ignore bank interest and VAT.
Show your full workings.

Total 15 marks

PART D

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

- 23.** SIP 9 notes “the particular nature of an insolvency office holder’s position renders transparency and fairness in their dealings of primary importance. Creditors and other interested parties with a financial interest in the level of payments from an insolvent estate should be confident that the rules relating to charging have been properly complied with.”

Requirement;

In most sequestration cases the Accountant in Bankruptcy will fix the remuneration of the trustee. With this and SIP9 in mind provide details of the following;

- a)** the principles of an office-holder’s remuneration and of the provision of related information;
- b)** the different bases of remuneration which may be requested by the officeholder;
- c)** information to be provided by the officeholder prior to the level of remuneration being determined; and
- d)** factors to which those determining the officeholder’s remuneration must have regard.

½ mark per point up to 15 marks

Total 15 marks

- 24.** Max Edoute has approached your firm for advice in respect of his personal finances. Having recently been made redundant, he was out of work for some time during which he started to use his credit cards and short-term loans to cover his living expenses. Max's debts now amount to circa £80,000. Max is married and has three children, one of whom is severely disabled.

Max and his wife own the family home which is subject to a mortgage and has been heavily adapted for the disabled child's needs. Despite the adaptations, Max estimates that there is approximately £100,000 equity in the property. Max has found stable employment and believes that he has a surplus income of circa £400 per month.

Requirement;

SIP 3.3 states that advice given to a debtor should take account of their personal circumstances. With this in mind your principal has asked you to prepare a memo outlining the options which are available to Max.

½ mark per point up to 15 marks

Total 15 marks

25. Your principal has been appointed trustee in the Sequestration of Miss Law (“the Debtor”) following the award of sequestration on 25 April 2020 on a petition presented to the Court on the 1 March 2020 by HM Revenue & Customs (“HMRC”).

The Debtor is the sole owner of 44 Dale Mews in Oxtun (“the Property”). The Debtor was a self-employed as a long-distance HGV driver but stopped trading on Christmas Eve 2018, at this time she gifted her wholly owned lorry to her brother. She lives at the Property by herself and runs a dog walking service from time to time to help her family and friends.

The Debtor had always kept up to date with her tax affairs but in the last few years she found it difficult to pay her personal tax liabilities as she was putting more of her money into her ISA in anticipation of her retirement. She was keeping the ISA money as an informal private pension as she was worried the state pension would not provide enough income when she did eventually retire. As a result of increasing her savings pot for her ‘pension’ she did not have enough money to pay her tax bills as and when they fell due.

HMRC lodged a petition at the Sheriff court and a warrant to cite was issued on 1 March 2020, the debt is in respect of unpaid tax of £50,000.

Upon receipt of the warrant to cite the Debtor immediately went to her bank and transferred to HMRC’s solicitors £25,000 from her ISA balance of £50,000, she also made a payment at the same time to her mortgage company to clear the arrears of £10,000 and withdrew £3,000 to pay for living costs. The Debtor had intended to pay the balance of the £25,000 to HMRC the following week but had forgotten to do so as she had got busy walking dogs.

Aside from the tax debt the Debtor owed £500 to a credit card, £5,000 to her bank for a business overdraft, £15,000 to the Student Loans Company for a student loan and £20,000 to Loans R Us for a loan she had taken to pay for a cruise she and her husband went on in 2016. She had also given a personal guarantee to Wild West Loans in respect of a loan that her nephew took to buy a jet ski, and as far as she knows he is making payments to Wild West Loans but does not know if the account is up to date.

The Property is valued at £200,000 and the secured mortgage outstanding to Long Road Mortgages is £180,000. The Debtor has provided a recent mortgage statement.

Requirement;

- a) Set out in a note to the trustee identifying the assets of Miss Law and the potential action to be taken to realise these assets.

½ mark per point up to 10 marks

- b)** Set out in a separate note to the trustee giving your comments on an initial review of the creditor claims prior to adjudicating for dividend purposes.

½ mark per point up to 5 marks

Total 15 marks