

# JOINT INSOLVENCY EXAMINATION BOARD

*Joint  
Insolvency  
Examination  
Board*

Joint Insolvency Examination

Wednesday 9 November 2011

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## PERSONAL INSOLVENCY (3.5 hours)

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ANSWER ALL FOUR QUESTIONS

EACH QUESTION CARRIES TWENTY-FIVE MARKS

SUBMIT ALL WORKINGS

**The Examiner will take account of the way material is presented. Candidates should answer the questions set - marks will not be awarded for extraneous material.**

**Note:** References to legislation are to that which was in force on 30 April 2011. References to 'the Act' are to the Insolvency Act 1986 as amended.

References to Sections, Schedules and Rules are to Sections and Schedules of the Act and to Rules of the Insolvency Rules 1986 as amended.

References to Sections and Rules of other Acts, Regulations and Orders will mention the Act, Regulation or Order.

1. You are an authorised insolvency practitioner. Late yesterday afternoon, 8 November 2011, you received a telephone call from the Official Receiver. He told you that yesterday morning the Court made a bankruptcy order against George Peacock on his own petition. The Official Receiver asked whether you would be willing to be appointed by the Secretary of State as trustee in bankruptcy of George.

Before committing yourself you asked the Official Receiver for further information. You were told the following:

- George trades on his own account as Peacock Electrical from a leased lock-up shop close to your office. George sells a wide range of new and second hand household electrical appliances and carries out repairs to television and satellite TV equipment in a small annex to the rear of the shop. The landlord, who has not received the rent due to him on each of the previous three quarter days, has threatened to distrain.
- News travels fast in the small community and the Official Receiver has already been contacted by five creditors, all of whom expressed grave concern about the way in which George has been running his business. All five creditors indicated that they were not surprised that George has gone bankrupt. They strongly suspect that George has been losing money for some time and say that there is a long list of creditors who, between them, are owed a considerable amount of money.
- Carol, who is George's only employee, has telephoned the Official Receiver to say that two customers, who had left televisions with George for him to repair, had tried to collect their equipment. The repairs have not been started but George has refused to return their equipment to them, saying that he could not do so because of his bankruptcy.
- Vera Rose, who owns a similar business in a nearby village and who has learned of George's bankruptcy through local gossip, has expressed an interest in taking over George's business.
- George, who lives in a rented flat in a nearby village, has no assets other than those relating to his business. So far as the Official Receiver can tell, any liabilities other than those incurred by George in his business are likely to be minimal.

Having considered all the information given to you, and being satisfied that you would not be conflicted from acting, at 09:30 this morning you telephoned the Official Receiver to say that you are willing to act as George's trustee in bankruptcy. You provided the Official Receiver with your consent to act and have been told that the certificate appointing you as trustee will be faxed over to you shortly.

### **Requirements**

**Explain the actions and the decisions that you will need to take in the first week following your appointment in relation to the assets and creditors in George's bankruptcy estate.**

**(25 marks)**

**NOTE.** You should state such reasonable assumptions as you consider necessary.

2. An individual burdened by and unable to pay off credit card debts who wishes to take positive action to sort out his financial affairs now has more options open to him than at any time in history.

**Requirements**

**Set out and compare the options available to such an individual.**

**(25 marks)**

3. In 1998 Matt, Alex and Giles set up in partnership trading as Royal Oak Furnishings (“the Partnership”). The Partnership, which operated from a factory unit, manufactured a bespoke range of chairs which were sold to the general public from a shop adjacent to the factory.

On 5 January 2010 Isfield Timber, suppliers of wood to the Partnership, presented a petition for the compulsory winding up of the Partnership and bankruptcy petitions against all three partners. The winding up and bankruptcy orders were made on 22 February 2010. You were appointed liquidator of the Partnership and trustee in bankruptcy of each of the partners on 26 April 2010.

The statements of affairs as at 22 February 2010 showed the following;

	<b>Royal Oak Furnishings</b>	<b>Matt</b>	<b>Alex</b>	<b>Giles</b>
	£	£	£	£
<b>Assets</b>				
Leasehold factory and shop	3,000			
Goodwill	17,000			
Stock, plant and equipment	18,000			
Customer list and order book	3,000			
Residential property		230,000	550,000	125,000
Mortgage on residential property		(206,000)	(370,000)	(113,000)
Joint owner’s interest		(12,000)	(90,000)	
Other assets		5,000	14,000	2,000
Estimated total assets	41,000	17,000	104,000	14,000
<b>Liabilities</b>				
Petitioning creditor	56,000			
Other trade creditors	44,400			
HMRC – PAYE	6,500			
HMRC – Schedule D		22,700	23,500	15,500
Bank overdraft – unsecured	22,700			
Employees’ claims	4,000			
Credit cards and loans		16,800	38,700	18,800
Other personal creditors		13,900	18,900	5,100
Estimated total liabilities	133,600	53,400	81,100	39,400
Estimated surplus/(deficiency)	(92,600)	(36,400)	22,900	(25,400)

A recent file review has brought the following to your attention:

- Creditors have submitted proofs of debt in line with the figures given in the four statements of affairs, but copy invoices attached to proofs of debt received from two trade creditors included in the statement of affairs for the Partnership lead you to conclude that the debts concerned, which total £4,800, relate to Alex personally.
- Proofs of debt received for £3,000 of the personal debts in the statement of affairs for Matt suggest that these debts had been incurred by the Partnership in the normal course of trading.
- The amounts due to the former employees of the Partnership relate to unpaid holiday pay.
- The factory and shop were held by the Partnership under a lease which was forfeited by the landlord a few days after the making of the winding up order. Advice received from your agent was that the factory was in a poor state of repair and it would have been highly unlikely that you could have made any realisation from assigning the lease. The landlord managed to find a new

tenant straight away but has informed you that there are arrears of rent due from 2009 of £4,500. He has promised to submit the relevant proofs of debt in the near future.

- The figures for stock, plant and equipment and the customer list and order book shown in the statement of affairs for the Partnership turned out to be accurate reflections of the gross realisations made by the Official Receiver. The goodwill shown in the statement of affairs was based on a historic valuation shown in the Partnership's books and records and had no realisable value. After deducting agent's costs and all other charges and fees arising from the Official Receiver's involvement in the liquidation, a credit balance of £12,800 was received by you.
- No written partnership agreement appears to have existed but a document found by you suggests that the three partners shared profits and losses in the proportions Matt 50%, Alex 25% and Giles 25%.
- The residential properties lived in by Matt and Alex were sold voluntarily after your appointment. Their interests realised the amounts shown in their statements of affairs. Giles was unable to keep up his mortgage payments and the mortgagee has recently appointed a receiver over his property. On current information you anticipate receiving a claim from the mortgagee of £12,000.
- You were able to realise the other assets shown in the three partners' statements of affairs for the amounts shown in those statements.

The creditors in all four estates have passed resolutions fixing your remuneration by reference to the time properly spent by you and your staff. The total costs and expenses (including the Secretary of State's administration fee on realisations to date and your remuneration) which you expect to be payable by you out of each estate are as follows:

<b>Royal Oak Furnishings</b>	<b>Matt</b>	<b>Alex</b>	<b>Giles</b>
<b>£</b>	<b>£</b>	<b>£</b>	<b>£</b>
7,700	15,800	33,200	12,300

### Requirements

- (a) Prepare estimated outcome statements for the liquidation of the Partnership and for each of the bankruptcy estates. (22 marks)
- (b) Calculate the rate of the dividend available to each class of creditor in each estate. (3 marks)

(Total: 25 marks)

**NOTES:** You should state such reasonable assumptions as you consider necessary.  
Ignore taxation in relation to asset realisations.  
Ignore VAT.

4. You are an authorised insolvency practitioner. A week ago, you were consulted by Ann Griffin (“Ann”). Ann is very concerned because Laurence Bull, her husband’s trustee in bankruptcy (“the Trustee”) who was appointed on 14 September 2010, has recently written to Ann asking her to put forward proposals in relation to the family home. The Trustee has asked for a reply within six weeks and indicated that, if none is received, he will instruct solicitors to issue proceedings seeking orders for possession and sale.

You sought further information from Ann and conducted an online search at HM Land Registry. You ascertained the following:

- Ann is married to Ralph who presented his own bankruptcy petition and was declared bankrupt on 8 June 2010. Ralph and Ann have three dependent children, one of whom attends a local school which specialises in educating children with severe behavioural difficulties.
- For fifteen years Ann has been a teacher working full time in a local primary school. Before being made bankrupt Ralph was the sole director of and shareholder in Goldbridge Kebabs and Burgers Limited (“Goldbridge”) a small limited company in the catering industry. Goldbridge was placed into compulsory liquidation in November 2010 and has no realisable assets. Since late 2010 Ralph has been unemployed and is being treated by his doctor for depression.
- The family lives at Fish Cottage, Danehill (“the Property”). Ann and Ralph are registered as owning the Property as joint tenants. A recent valuation obtained by Ann values the Property at £385,000. An agent instructed by the Trustee a month ago values the Property at £415,000.
- There are two charges registered against the Property. The first charge is in favour of Haywards Building Society for monies advanced to help Ann and Ralph buy the Property in 2004. The Property is the second owned by Ann and Ralph since their marriage in 1997. The amount originally advanced by Haywards Building Society met the entire cost of acquiring the Property save for £10,000. Ann believes that the £10,000 was all that remained from the sale of the first property. The amount currently owed to Haywards Building Society is £280,000. The second charge, granted in May 2005, is in favour of Heath Bank Limited as security for a personal guarantee given by Ralph in respect of Goldbridge’s bank overdraft which currently stands at £16,000.
- As Ralph has had no earnings in recent months, Ann alone has been meeting the monthly interest payments to Haywards Building Society. These total £6,000 to date. She has been unable to afford to pay anything to Heath Bank Limited but has paid all the household bills which have added up to about £12,000.
- In 2008, needing more room to house their growing family, Ralph and Ann employed a local contractor to build an extension to the Property. This cost £34,000 and was paid for by Ann using part of an inheritance left to her by a rich uncle. Ann’s agent has estimated that, without the extension, the Property would be worth about 10% less than its present value.
- A local creditor has shown Ann a progress report circulated recently by the Trustee. The report shows that gross realisations in the bankruptcy to date total £30,000 and the costs and expenses of the bankruptcy, including the Trustee’s remuneration (which is paid up to date), have been £14,000. The Trustee reported that he hoped to be able to reach an agreement with Ann for her to acquire Ralph’s interest in the Property and if this were to prove possible then the future costs and expenses would be about £3,000. If no agreement is possible, the Trustee estimates that the costs and expenses would total £16,000. Other than Ralph’s interest in the Property there are no other assets remaining to be realised. Unsecured creditors’ claims are likely to total £86,000.

Ann has asked you to write to her to explain (1) the key issues that arise from the information she has given you, (2) the points that she will need to consider before responding to the Trustee, and (3) the options available to her.

### **Requirements**

**Consider, in the form of a memorandum for your file, the issues that you will need to cover when writing to Ann. You should state briefly the relevant statutory or other authorities applicable to each issue.**

**(25 marks)**

**NOTE: Ignore taxation and any interest payable to creditors.**

