

JOINT INSOLVENCY EXAMINATION BOARD

*Joint
Insolvency
Examination
Board*

Joint Insolvency Examination (Scotland)

Wednesday 6 November 2013

PERSONAL INSOLVENCY (3.5 hours)

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 2013. References to 'the Act' are to the Bankruptcy (Scotland) Act 1985 as amended.

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

1. You were appointed Trustee in Bankruptcy of Wilfred Shadbolt ("Wilfred"). The Award was made on 4 January 2011 on a petition presented on 20 November 2010 by Jack Point Limited, creditors for £14,400.

Your enquiries have revealed the following:

- Wilfred and his former wife, Kate, are shown at the Land Register as being joint owners of a residential property ("the Property"). Shortly prior to their divorce in February 2009 Wilfred moved out of the Property which, since that time, has been occupied by Kate and the two children of the marriage who are now aged 14 and 11. Having left the matrimonial home Wilfred moved into rented premises until January 2010 when, jointly with a Miss Elsie Maynard ("Elsie") he bought a flat ("the Flat").
- Agents appointed by you in September 2013 have advised that the current market values of the Property and the Flat are £650,000 and £180,000 respectively.
- Fairfax Bank ("Fairfax") holds a standard security over the Property, which was granted in December 2002 when Wilfred and Kate acquired the Property. A second standard security was granted in 2006 to Yeoman Finance ("Yeoman") who advanced funds for an extension to the Property. According to recent statements, Fairfax and Yeoman are owed £380,000 and £60,000 respectively.
- In February 2009 an order was made by the Court under which Wilfred was awarded a 40% interest in the Property, although he is prevented from realising his interest until such time as both of his children have reached 18 years of age.
- In February 2010 an inhibition was registered by Kate against the Property in respect of a capital sum awarded by the Court in February 2009. The lump sum, including accrued interest is £17,400.
- In July 2010 an Inhibition was registered against the Property by Richard Sergeant, a former friend owed £7,000 by Wilfred. You have received a claim from Mr Sergeant showing the full debt due, disclosing the existence of the Inhibition and indicating that Mr Sergeant intends to rely on this diligence.
- Wilfred and Elsie are shown on the Land Register as being joint owners in relation to the Flat. The Flat was acquired for £180,000 and the entire deposit of £130,000 was provided by Wilfred using monies inherited by him from his grandfather.
- Tower Mortgages holds a first standard security over the Flat to secure £50,000 advanced to Wilfred and Elsie when they bought the Flat. Payments are on an interest only basis and there are no arrears on the account.
- The CSA has advised you that it has an unsecured claim of £5,800 which has arisen because of Wilfred's failure to pay monthly aliment amounts for the children
- Other debts due by Wilfred comprise £13,800 due to three credit card companies and £4,900 owed to Kate who made a loan to Wilfred in 2008 so that he could settle a pressing account. Wilfred also owes £6,000 to Elsie who, in 2010, paid off a large fine incurred by him.

You are unaware of any other potential assets. Your best estimate is that, whatever happens, the total of the costs and other payments to be made in respect of the Bankruptcy are likely to be about £40,000.

Requirements

Set out the issues and explain the considerations and decisions with which you will be faced when dealing with Wilfred's interests in the Property and the Flat. Support what you say with relevant calculations and state any assumptions which you have made.

(25 marks)

Note : Ignore VAT

2. You are a Senior Manager working for an Authorised Insolvency Practitioner. Yesterday you were telephoned by Archie Grosvenor ("Mr Grosvenor") who is a Regional Recoveries Manager at Calverley Bank plc ("the Bank").

Mr Grosvenor told you that the Bank is an unsecured creditor of Reggie Bunthorne ("Reggie") who, on 27 June 2013, signed a Trust Deed. The Trust Deed was drafted in accordance with the Statement of Insolvency Practice 3A (Scotland) 2009. The Trust Deed became a Protected Trust Deed (PTD) on 6 August 2013.

In June 2013 the Bank was owed £24,000 across a number of accounts by Reggie, who had also disclosed further amounts totalling £39,000 as being due to five other financial creditors and a longstanding debt of £13,000 due to his brother.

Mr Grosvenor explained that his initial inclination had been to object to the protection of the Trust Deed on behalf of the Bank, primarily because he considered that Reggie (who for many years has been employed in a management capacity by a Local Authority) had not been entirely honest in his dealings with the Bank. However, in the end Mr Grosvenor had been persuaded by the Bank's head office that it was in the Bank's interest to allow the PTD to proceed. This was largely because the Trustee had stated in his report that the return to creditors under the PTD would be about 30 pence in the pound whereas the estimated return, were Reggie to be made bankrupt, would be under 5 pence in the pound.

Mr Grosvenor explained to you that, because of his initial misgivings, he had kept a close eye on the PTD following its approval. He now regrets the Bank's decision to support the PTD, for the following reasons:

- Part of Reggie's overall indebtedness to the Bank was a debt on a credit card. After the approval of the PTD three overseas transactions on the card dating from May 2013 had come to light increasing the Bank's claim in the PTD by £2,200.
- The Statement of Assets and Liabilities circulated to Creditors contained a note indicating that his mother would pay £20,000 into the PTD for the benefit of creditors. This sum was to be paid by way of a gift, although such a payment would not be made were Reggie to be made bankrupt. Payment of the entire £20,000 was to be made within 3 months of signing the PTD but no payment at all has been made.
- The Statement of Assets and Liabilities circulated to Creditors contained a note that Reggie had indicated that, in the event that the PTD was approved, his brother would agree not to submit a claim but would write off the debt due to him. The brother's agreement to this course of action had been given in writing. From information received recently by Mr Grosvenor it appears that Reggie's brother had been made bankrupt in April 2013.
- In the circular issued to creditor's Reggie agreed to pay an amount each month to the Trustee starting on 15 July 2013 and continuing for 3 years. The payments were set at £200 per month. The first two payments were made on time but those due in September and October are outstanding.
- He has received information that indicates Reggie has recently had a promotion and is enjoying a substantial increase in income. His total income net of tax and national insurance, is now £5,500 per month. He is aware his mortgage is £1,000 per month and other allowable expenditure is approximately £950 per month. His wife does not work and he has no dependent children.
- From talking to the other financial creditors Mr Grosvenor has learned that the total debt due to them is £3,000 higher than originally thought. One previously undisclosed creditor owed £1,200 has lodged a claim in the PTD.

- One asset subject to the PTD is Reggie's interest in his home ("the Property") which he owns jointly with his wife. In the Trust Deed documentation Reggie's 50% interest was calculated to be worth £25,000, based on a professional valuation of the Property of £250,000 carried out in May 2013. Subsequent enquiries made by Mr Grosvenor have led him to believe that the valuation of the Property may have been over optimistic and that Reggie's interest is worth only about £10,000.
- On 28 October 2013 Mr Grosvenor received a letter from an organisation instructed by Reggie claiming that Reggie had been wrongly sold payment protection insurance when taking out a loan with the Bank in 2006. The provisional amount of the claim is £1,500. So far as Mr Grosvenor is concerned receipt of this letter is the final straw.

Mr Grosvenor told you that, last week, he wrote to the Trustee of the PTD setting out his concerns and asking him to explain what steps he (the Trustee) proposes to take in the light of developments since 27 June 2013. Two days ago Mr Grosvenor received an e mail from the Trustee pointing out that it is early days. The Trustee expressed confidence that matters would soon be back on track and that he saw no reason to revise the estimate for the amount that the creditors would receive by way of dividend.

At the end of your conversation with Mr Grosvenor he asked you to consider all that you had been told and to arrange to meet him next week. He asked you to prepare a briefing note in advance of the meeting.

Requirements

Prepare the briefing note required by Mr Grosvenor. Explain, in relation to each of the issues described by Mr Grosvenor, the relevant law and practice. Set out your analysis of each issue and describe the steps the Trustee should be taking to deal with each.

(25 marks)

- 3a. The Code of Ethics requires an Insolvency Practitioner who proposes to act as Trustee in Bankruptcy or as Trustee in relation to a Protected Trust Deed to comply with certain fundamental principles, to identify threats to those principles and to put in place safeguards to reduce or eliminate the level of those threats.

Requirements

Set out the fundamental principles and the principal categories of threat with which an Insolvency Practitioner must be concerned. (5 marks)

Set out the safeguards that an Insolvency Practitioner should put in place in order to address any threats identified by him. (6 marks)

- 3b. Whilst in office a Trustee in Bankruptcy is obliged, or may be required by the circumstances of the case, to interact with the Accountant in Bankruptcy

Requirements

Identify when and why such interaction is or may be required. (14 marks)

(25 marks)

4. You were appointed Trustee in Bankruptcy of Joseph Porter ("the Bankrupt") on 23 May 2013. The warrant to cite date was 7 March 2013. The Bankruptcy Petition was presented by HM Revenue & Customs ("HMRC") for arrears of Schedule D tax and national insurance contributions. You were nominated to act as Trustee by the petitioning creditor.

At the initial interview with the Bankrupt, he described himself as a business adviser. He explained that, since 2010, he has worked from home under the name Porters, preparing accounts and tax returns for local businesses. Prior to establishing Porters he was, for 20 years, a partner in Rackstraws, a local firm of accountants.

Following your appointment you called the statutory meeting of creditors under s21 of the Act. At that meeting Commissioners were elected. ("the Commissioners"). The first meeting of the Commissioners was held immediately after the statutory meeting of creditors, at which the Commissioners expressed concern that so few assets had been disclosed by the Bankrupt in his statement of affairs.

At the request of the Commissioners you have carried out a full investigation into the Bankrupt's financial affairs. You have discovered four matters which, you think, may go a long way towards justifying the Commissioners concern:

- The Bankrupt and his wife, Josephine, live in a house called Tuckers. An agent appointed by you values Tuckers at £260,000. The Land Register shows that Tuckers was registered in Josephine's sole name at the time of acquisition (April 2001) and that there are no entries in the register of charges. Prior to moving to Tuckers, the Bankrupt and Josephine lived in a property called Pinafores which they owned jointly in equal shares. Recently, the Bankrupt admitted to you that Tuckers had been registered in Josephine's sole name because the Senior Partner of Rackstraws disapproved of partners holding assets in their own name in case a large claim was made against the firm.
- In January 2011 the Bankrupt gave £20,000 to his grandson. This money was used by the grandson to put down the deposit on a flat in which he now lives with his civil partner.

- In May 2011 the bankrupt transferred his savings of £25,000 into a three year fixed rate deposit account in Josephine's name at a local Building Society. The Bankrupt has explained to you that Josephine retired from work at the end of 2010. As a result she had little income of her own other than a small pension. By transferring the £25,000 to Josephine, use could be made of her personal tax allowance.
- Yesterday, a firm of solicitors acting for a Captain Corcoran faxed to you a copy of an interlocutor made last week by a Sheriff in Perth Sheriff Court in proceedings of which you were previously unaware. The Interlocutor sets down the timetable for further procedures in an action started by the Bankrupt in April 2013 seeking to recover £124,000 from Captain Corcoran.

Three months ago agents appointed by you sold the Bankrupt's car and, after deducting their costs of £1,100, the agents sent you a cheque for £4,900. In September 2013 you surrendered an endowment policy and received £27,000.

Your firm's time records show that, to date, you and your staff have spent 56 hours working on the bankruptcy incurring time costs of £7,000. Out-of-pocket disbursements incurred by you to date are £600.

You have received claims from creditors totalling £130,000, much in line with the figures in the Bankrupt's statement of affairs. Further creditors disclosed by the Bankrupt as being owed £18,000 have not yet submitted their claims.

Requirements

- (a) Prepare a Receipts and Payments Account from commencement up to today's date, showing the balance currently standing to the credit of the bankruptcy. (5 marks)**
- (b) Set out your views on the prospects of making any recoveries from the four matters identified by you and explain what further steps you, as Trustee, should take. In each case support what you say by referring to the relevant law and by stating any assumptions which you have made. (20 marks)**

(25 marks)

Note: Ignore VAT.

