

JOINT INSOLVENCY EXAMINATION BOARD

*Joint
Insolvency
Examination
Board*

Joint Insolvency Examination

Wednesday 3 November 2010

PERSONAL INSOLVENCY (3.5 hours)

ANSWER ALL FOUR QUESTIONS

QUESTIONS 1 AND 2 CARRY TWENTY MARKS EACH
QUESTIONS 3 AND 4 CARRY THIRTY MARKS EACH

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 2010. 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 Insolvency Act 1986 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 insolvency practitioner. You have been consulted by Dr Grace, a creditor of Mr Jessop. Yesterday evening Dr Grace attended a meeting of creditors called to consider an Individual Voluntary Arrangement (IVA) proposal put forward by Mr Jessop. The IVA, in respect of which no interim order had been obtained, was approved but Dr Grace believes “the whole thing was a sham”.

During the course of the interview you ascertained the following:

- Mr Jessop, who owns a small financial advisory business, lives and works in London. He has a wife and two children aged 14 and 12. He earns £50,000 per annum while his wife earns £20,000 per annum as a teacher.
- Mr Jessop claims to have no assets. The house in which Mr Jessop lives is, according to an answer he gave at the creditors’ meeting, “either owned by a family trust or in his wife’s name – he cannot remember”. Dr Grace has done some research and believes that the house may be worth £750,000.
- The only funds available for creditors in the IVA will come from an amount of £30,000 to be paid to the Supervisor at an unspecified time by an unidentified member of Mr Jessop’s family.
- Creditors are as follows

	£
Dr Grace	55,000
HMRC	70,000
Trumpers	22,000
Mrs Jessop - wife	170,000
George Jessop - brother	280,000
Council tax	4,000
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	601,000
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- The creditors’ meeting was held in Penzance because that was where Mr Jessop was taking a well-earned break. Other than Mr Jessop, the meeting was attended only by Dr Grace and Mr Rhodes, the Nominee who is a member of a London based limited liability partnership called Trumpers.
- In his Nominee’s report to Mr Jessop’s creditors Mr Rhodes had merely
 - (1) said that in his view the IVA had an excellent prospect of being approved and implemented;
 - (2) recommended that a meeting of creditors should be summoned to consider the proposal; and
 - (3) given the date, time and place for the meeting.

- All the creditors, except HMRC, submitted proofs of debt before the creditors' meeting. Mrs Jessop and George Jessop both submitted proxies instructing the chairman to vote in favour of the IVA. The council's proxy was a general proxy in favour of the chairman and Mr Rhodes used it to vote in favour of the IVA. Trumpers did not submit a proxy but Mr Rhodes advised the meeting that Trumpers would be voting in favour of the IVA. Dr Grace voted against the IVA and HMRC were not represented and did not vote. Mr Rhodes said that since more than 75% of all the creditors were in favour of the IVA it was duly approved and that he was appointed as Supervisor. He also said that he would send out the chairman's report in the next two weeks.

Requirements

Set out the:

- (a) **shortcomings of the creditors' meeting described above. (7 marks)**
- (b) **criticisms that could be made of Mr Rhodes. (9 marks)**
- (c) **remedies available to Dr Grace. (4 marks)**

(20 marks)

2. You are an insolvency partner in the firm of Larwood & Son, Accountants and Insolvency Practitioners. Mrs Greig and her son, a good friend of your senior partner, came to see you last week in great distress. Her husband died on 26 September 2010. She is the sole Executrix of, and the only beneficiary under, her husband's will. Unfortunately, unbeknown to Mrs Greig, it appears that Mr Greig was in debt.

Mrs Greig had gathered together some papers and from these and from what she said at the meeting you learned the following information

- Mr and Mrs Greig owned their matrimonial home as joint tenants. It is valued at £220,000 and there is no mortgage.
- Mr Greig owned a motor car which the local garage values at £3,000.
- Mr Greig had a life policy which was written in trust for their two children. The amount payable on Mr Greig's death is £20,000.
- Mr Greig's creditors comprise

	£
Megabank - credit card	11,000
Megabank - loan	15,000
Devon Bank - overdraft	3,500
Golf club - fees and bar bill	2,500
Gas - last quarter's bill	1,200
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	<u>33,200</u>

- The bill for the funeral of £2,600 is unpaid.
- Immediately following Mr Greig's death, Mrs Greig approached Parks, a firm of solicitors, for help. They refused to act because in their view there were insufficient assets in the estate to pay their fees.
- Mrs Greig is in receipt of a state pension and a small private pension. She has £2,000 in savings and is intending to use this to settle in part the funeral director's account.

Creditors are pressing and the gas company has threatened to cut off the supply to the house. Mrs Greig is hoping that you can assist her. Her children have indicated that they will do what they can to help.

Requirements

Draft a letter to Mrs Greig setting out how the estate might be dealt with and your advice as to the way forward.

(20 marks)

NOTE: Ignore points arising from the Administration of Estates Act 1925.

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PLEASE TURN OVER

3. You were appointed Trustee in Bankruptcy over the estate of Mr Barrington by the creditors on 8 January 2010. Mr Barrington was made bankrupt on 9 December 2009 following a petition presented by HMRC on 20 August 2009 for unpaid VAT.

Mr Barrington was a builder. He is 55 years old. He was very successful until he took on a large contract to build stands at the Barchester County Cricket ground in early 2008. Owing to the unexpected hardness of the underlying rock and the innovative design of the stands, the contract soon proved to be a disaster and he lost in the region of £500,000.

You review the files and note the following information:

- Mr and Mrs Barrington live at 87 Bradman Close, Barchester. The Official Receiver's notes refer to a valuation of the property at £400,000. There is a first charge of £150,000 from Ybank PLC securing a loan which was used in 2001 to purchase the property, and a second charge securing Mr Barrington's business borrowing of £76,000 from Zbank. The house appears to be in joint names. There is no further information on the file about the property and nothing seems to have been done.
- Mr Barrington's plant, machinery and stock were sold by agents for £18,000 plus VAT on 13 November 2009. Costs were £2,000 plus VAT.
- Mr Barrington's book debts have a book value of £280,000. Letters requesting payment were sent in February 2010. One debtor paid £15,000 and another stated that he had paid the £35,000 owed to Mr Barrington to Waugh Brothers to whom the debt had been assigned on 16 March 2009. There is a note in the file to say that Waugh Brothers had at one time been owed £40,000 for ground works. No other debtors have responded.
- Mr Barrington started making payments into an approved personal pension in 1990. Correspondence in the file suggests that the fund was worth £370,000 at 31 December 2008 compared to £50,000 at 31 December 2007.
- Mr Barrington currently works as a contracts manager. His net pay after tax is £3,500 per month. The household outgoings total £2,200 per month.
- A draft list of creditors on the file shows the following:

	£
HMRC - VAT	70,000
HMRC – PAYE/NI	30,000
HMRC – Income Tax	66,000
Waugh Brothers	5,000
Other trade creditors	170,000
Ybank PLC	150,000
Zbank PLC	76,000
Credit cards	45,000
Mrs Barrington	55,000
	<u>667,000</u>

- A receipts and payments account on the file dated 3 November 2010 shows the following:

		£
<i>Receipts</i>		
Agents	plant etc on account	10,000
Deposit on petition		430
VAT @ 15%		1,500
		11,930
<i>Payments</i>		
OR Admin costs		1,715
<i>Trustee's disbursements</i>		
Postage and stationery		240
Advertising		150
VAT @17.5%		68
		2,173
Balance on Insolvency Services Account		9,757

Requirements

- (a) Set out Mr Barrington's potential assets and explain the steps that you would take to maximise realisations, commenting where appropriate on the likelihood of success. You should state such reasonable assumptions as you consider necessary and identify any applicable statutory provisions. (22 marks)
- (b) Prepare a receipts and payments account assuming that the realisations identified by you under (a) have all been made. Calculate the rate of dividend to each class of creditor. (8 marks)

(30 marks)

4. Mr Stewart trades as Stumps, a bespoke cricket equipment manufacturer. He carries on the business from Hambledon House, a substantial freehold property originally purchased by his father and inherited by him in 1987. Stumps employs five people and makes profits before drawings and tax of £70,000 per annum. Unfortunately in 2008, the business was adversely affected by the worsening economic conditions and suffered a substantial bad debt of £40,000. At the insistence of the bank Mr Stewart came to you for advice following which an Individual Voluntary Arrangement (IVA) was proposed and accepted by creditors. You were appointed supervisor on 5 October 2008.

The principal terms of the IVA which is subject to R3's standard terms and conditions, are as follows:

- contributions from earnings of £3,000 per month are to be paid into the IVA commencing on 1 November 2008
- Mr Stewart's equity in the matrimonial home, 100 Trent Bridge Way, is to be realised within eighteen months of the agreement of the IVA
- if on the fourth anniversary of the IVA creditors would not otherwise be paid in full, the equity in Hambledon House is to be realised
- the IVA is to last five years or until such time as creditors are paid in full whichever is sooner
- the debtors, stock, equipment and goodwill of Stumps are to be retained by Mr Stewart for use in the business
- supervisor's fees are to be based on time costs but restricted to a maximum of 15% of realisations excluding sums paid to secured creditors and VAT
- dividends are to be calculated by reference to the funds in the supervisor's account on the first and subsequent anniversaries of the agreement of the IVA, and paid with the annual report
- £2,000 is to be retained in the supervisor's account at all times until the IVA is concluded in case there is need to present a bankruptcy petition against Mr Stewart.

100 Trent Bridge Way was valued at £380,000 when the proposal was prepared. It is subject to a mortgage of £140,000 in favour of ABC Bank plc. Mr and Mrs Stewart own the house as joint tenants.

Hambledon House was valued at £500,000 in October 2008 on an open market basis and assuming existing use. It is subject to a mortgage from XYZ Bank plc of £420,000. When the proposal was formulated, Mr Stewart's accountants advised you that if the property was sold, there would be a capital gains tax liability of around £60,000.

The second floor of Hambledon House has never been used by Stumps and over the years has been let by Mr Stewart to a variety of tenants. It is currently let at a rent of £12,000 per annum to a firm of wine merchants. The tenancy agreement provides that the rent is payable on the usual quarter days.

The business and assets of Stumps have been valued at £80,000 on a going concern basis and at £15,000 if the business were to cease.

Creditors in the IVA comprise:

	£
HMRC - VAT	60,000
HMRC - PAYE/NI	15,000
HMRC- Income tax	66,000
Charles Stewart (Uncle) loan	120,000
Trade creditors	25,000
Employees - pay in lieu and redundancy	30,000
	<u>316,000</u>

Under the terms of the IVA Charles Stewart's claim is to be deferred until such time as all other creditors have been paid in full. Employee claims did not crystallize because they were retained to work in the business.

You have just undertaken a review and discovered that the IVA appears to be in trouble; the most recent contribution of £3,000 was received on 3 July 2010, HMRC have reported that the VAT return for the quarter to 30 September 2010 has not been received and Mrs Stewart is refusing to co-operate with a re-mortgage of 100 Trent Bridge Way.

Requirements

- (a) Compare and contrast the treatment of capital gains tax in an IVA and in a bankruptcy. (3 marks)**
- (b) Prepare a receipts and payments account as at today's date. You should state such reasonable assumptions as you consider necessary. (7 marks)**
- (c) Set out in the form of a memorandum to your insolvency manager the issues that should be considered and the steps that should now be taken. You should state such reasonable assumptions as you consider necessary. (20 marks)**

(30 marks)