

JOINT INSOLVENCY EXAMINATION BOARD

*Joint
Insolvency
Examination
Board*

Joint Insolvency Examination (Scotland)

Wednesday 9 November 2011

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 2011. 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. In 1998 Matt, Alex and Giles set up in partnership trading as Royal Oak Furnishings (“the Partnership”). The Partnership, which operated from a small factory unit, manufactured a bespoke range of chairs which were sold to the general public from a small shop adjacent to the factory.

On 5 January 2010 HMRC presented petitions for the bankruptcy of the partnership and all three partners. The Awards were made on 22 February 2010. You were appointed trustee in all four bankruptcy estates.

The statements of affairs at the date of bankruptcy showed the following;

| | Royal Oak Furnishings | Matt | Alex | Giles |
|----------------------------------|----------------------------------|-------------|-------------|--------------|
| | £ | £ | £ | £ |
| Assets | | | | |
| Leasehold factory and shop | 20,000 | | | |
| 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 |
| Liabilities | | | | |
| Trade creditors | 76,000 | | | |
| HMRC – VAT | 24,400 | | | |
| HMRC – PAYE | 6,500 | | | |
| HMRC – Schedule D | | 12,700 | 3,500 | 5,500 |
| Finance creditors | 13,000 | | | |
| Bank overdraft – unsecured | 9,700 | | | |
| Employees’ claims | 4,000 | | | |
| Credit cards | | 14,800 | 46,200 | 8,900 |
| Personal creditors | | 1,500 | 7,000 | 600 |
| Estimated total liabilities | 133,600 | 29,000 | 56,700 | 15,000 |
| Estimated surplus/(deficiency) | (92,600) | (12,000) | 47,300 | (1,000) |

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

- 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, had been incurred by Alex personally.
- Proofs of debt received for all 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.
- One finance creditor, owed £7,000 by the Partnership, holds a personal guarantee given by Alex.
- 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. The lease indicates that the lease is irritated due to the bankruptcy of the partnership. 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 machinery and the customer list shown in the statement of affairs for the Partnership turned out to be accurate reflections of the gross realizations made by the trustee. After deducting agent's costs and all other charges and fees arising, a credit balance of £12,800 was received by you as the trustee.
- No partnership agreement existed but a document found by you shows 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 are sold voluntarily after your appointment. Their interests in their properties realised the amounts shown in their statements of affairs. Giles was unable to keep up his mortgage payments and the security holder called up the security and exercised their power of sale. On current information you anticipate receiving a claim from the security holder of about £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 commissioners in all four estates have passed resolutions fixing your remuneration by reference to the time properly spent by you and your staff. The remuneration and the other costs and expenses which you expect will be payable out of each estate are as follows:

| | Royal Oak Furnishings | Matt | Alex | Giles |
|---------------------------------------|----------------------------------|-------------|-------------|--------------|
| | £ | £ | £ | £ |
| Legal fees | 200 | 1,100 | 1,600 | 200 |
| Property agent's costs | 200 | 800 | 800 | 300 |
| Trustee's out of pocket disbursements | 350 | 1,200 | 1,200 | 300 |
| Trustee's remuneration | 6,000 | 8,500 | 10,500 | 4,000 |
| Petitioner's costs | 1,200 | 800 | 800 | 800 |

Requirements

- (a) Prepare estimated outcome statements for all four bankruptcy estates, calculating the rate of the dividend available to each class of creditor. (15 marks)
- (b) Prepare a file note setting out;
- how commissioners are appointed,
 - how fees are fixed
 - information that should be provided in respect of time and charge out summaries.
- (10 marks)

(Total: 25 marks)

NOTES: You should state such reasonable assumptions as you consider necessary. Ignore VAT and any other taxation arising on either asset realisations or the costs and expenses of the bankruptcies.

2. You are an authorised insolvency practitioner. You receive a telephone call on 8 November 2011 from the solicitor acting for Hargreaves Wholesale Electrical Limited, the petitioning creditor. He advised that bankruptcy had been awarded today against George Peacock and that you had been appointed interim trustee.

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 has not received the last quarter's rent, but to date has not taken any action.
- News travels fast in the small community and the solicitor 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 solicitor 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 carried out and George refused to return their equipment to them, saying that he could not do so because of his current position. The warrant to cite date was 17 October 2011
- 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 has no assets other than those relating to his business. So far as the solicitor can tell, any liabilities other than those incurred by George in his business are likely to be minimal.

You had already provided the solicitor with your consent to act following confirmation that you were not conflicted to act in the case. The interlocutor appointing you as interim trustee will be faxed over to you shortly.

Requirements

Identify the actions you expect to have to take in the first week following your appointment when dealing with the assets and the creditors.

(25 marks)

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

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3. You are an authorised insolvency practitioner. Last Thursday, 27 October 2011, you were consulted by Ann Griffin (“Ann”). Ann is very concerned because Laurence Bull, her husband’s trustee in bankruptcy (“the trustee”), 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 to obtain an action for division and sale of the property.

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

- Ann is married to Ralph who presented his own bankruptcy application 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 has recently been treated by his doctor for depression.
- The family lives at Fish Cottage, Haddington (“the Property”). Ann and Ralph are joint owners of the Property. A recent valuation obtained by Ann values the Property at £385,000. An agent instructed by the trustee values the Property at £415,000.
- There are two securities registered against the Property. The first security 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 security, granted in May 2010, 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 £6,000.
- 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 recently 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. 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 the relevant statutory or other authorities applicable to each issue.

(25 marks)

NOTE: Ignore taxation and any interest payable to creditors.

4. An individual burdened by credit card debt 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)