



CANDIDATE NUMBER.....

INSOLVENCY PRACTITIONERS ASSOCIATION
CERTIFICATE OF PROFICIENCY IN INSOLVENCY

Examination 10 June 2011

INSOLVENCY

(3 HOURS)

Part A: All questions to be answered

Part B: All questions to be answered

Part C: 2 questions to be answered

The questions in Part A carry the marks as indicated

All questions in Part B and Part C carry 15 marks

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 Part B and Part C questions in the ICSA booklet(s) 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 2011.

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 the answer booklet(s) using the treasury tag provided.

Candidates should remain seated until the Invigilator has collected the tagged question paper and answer booklet(s). 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 Rules 1986 as amended.

References to SIPs are to Statements of Insolvency Practice.

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PART A

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MULTIPLE CHOICE

THE CORRECT ANSWER TO EACH OF THE QUESTIONS IS TO BE INDICATED BY PLACING A CROSS IN THE APPROPRIATE BOX.

FOR QUESTIONS 1 TO 10 ONLY ONE ANSWER IS REQUIRED. THERE IS ONE MARK FOR EACH OF THOSE QUESTIONS.

FOR QUESTIONS 11 TO 20 EACH QUESTION CARRIES THE MARKS INDICATED

1. **Which one of the following is a provable debt in bankruptcy proceedings in accordance with the Rules?**
- a) A parking fine
 - b) Monthly maintenance assessment payments
 - c) A Confiscation Order under the Proceeds of Crime Act 2002
 - d) A maintenance assessment lump sum award
2. **In appropriate circumstances you send a document by electronic delivery but a hard copy is requested. How long do you have to comply with this request?**
- a) 5 business days
 - b) 5 days
 - c) 7 days
 - d) 7 business days
3. **If an Interim Order is in place for a proposed IVA, how many days prior to its expiry should the Nominee lodge his report to Court?**
- a) 5 business days
 - b) 2 business days
 - c) 2 days
 - d) 5 days



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4. **You submit an adverse D report in a liquidation. Which of the following is it not necessary to append to the report?**
- a) A copy of the Statement of Affairs
 - b) A copy of the resolution to wind up the company
 - c) Details of the dividend prospects in the case
 - d) A copy of the minutes of the Section 98 meeting
5. **Which of the following is not a formal requirement of the Act which the Court must be satisfied with before making an Interim Order for a proposed IVA?**
- a) The debtor intends to make a proposal to his creditors
 - b) On the day of the application the debtor was an undischarged bankrupt or able to petition for bankruptcy
 - c) The major creditor(s) have indicated its/ their willingness to consent to the proposed IVA
 - d) No previous application for an Interim Order has been made in the preceding 12 months
6. **Where an IVA is approved after a bankruptcy order has been made at a time when the debtor is an undischarged bankrupt, the Court may order the following, apart from which one?**
- a) Annul the bankruptcy order
 - b) Give directions on the conduct of the bankruptcy
 - c) Give directions on the administration of the bankrupt's estate to facilitate the implementation of the IVA
 - d) Grant the bankrupt's discharge from bankruptcy
7. **Within how many business days following the directors' filing Notice of Intention to Appoint Administrators do the directors have to file Notice of Appointment of Administrators?**
- a) 5 days
 - b) 7 days
 - c) 10 days
 - d) 14 days



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8. Which of the following powers of a liquidator is expressly exercisable with sanction?
- a) Power to sell the company's property
 - b) Power to raise money on the security of the assets of the company
 - c) Power to bring legal proceedings for wrongful trading
 - d) Power to appoint an agent
9. Which of the following is not a definition of a company's inability to pay its debts for the purposes of an insolvent winding up?
- a) Failure to pay or compound for a sum exceeding £750 three weeks after the presentation of a statutory demand
 - b) Failure to account to HMRC for VAT or PAYE within 30 days of the due date for payment
 - c) Failure to satisfy an execution or Court judgment in whole or in part
 - d) An assessment by the Court that the value of a company's assets is less than the amount of its liabilities
10. Within how many business days following meetings of members and creditors held to consider proposals for a Company Voluntary Arrangement does the Chairman have to file his report in Court?
- a) 4 days
 - b) 5 days
 - c) 14 days
 - d) 2 days



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11. You intend to publish your Administrators' Proposals on a website to discharge your duties under Paragraph 49 of Schedule B1 of the Insolvency Act 1986.

What information must be included in the relevant notice to creditors specifically with regard to accessing the information?

(1/2mark per point up to a maximum of 2 marks)

12. In IVA proceedings, who may chair the creditors' meeting to consider the debtor's proposals?

(2 marks)



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13. Your Principal is acting as Nominee in relation to a director's Company Voluntary Arrangement proposal.

Under SIP 3 what steps should the Nominee take to satisfy himself that the value of the assets is appropriately reflected in the Statement of Affairs?

(1/2 mark per point up to a maximum of 2 marks)

14. In accordance with the Rules within what period should a Trustee's remuneration be determined by either the creditors' committee or a meeting of creditors? If not so determined, how will it be fixed?

(2 marks)



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15. Under the Act, how may a company be an associate of another company?

(2 marks)

16. Your Principal has been appointed Administrator of Jeans Limited by the company's Bank, which has fixed and floating charges over the company's assets. The Administrator intends to continue to trade the business for a period of at least two weeks in order to seek a sale of the business as a going concern. The company trades from five retail outlets, all of which are subject to formal leases with quarterly rent payable in advance on the usual quarter days. Each of the leases has more than two years left to run.

Set out the Administrator's responsibility following their appointment for rent and rates in respect of occupation of the company's premises.

(4 marks)



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17. A partner of your firm has today been appointed at a meeting of shareholders held at short notice as Liquidator of Fresh Fruit & Veg Limited, a company which is insolvent.

Set out the requirements of providing notice of a meeting to creditors in accordance with section 98 of the Act and SIP 8.

(4 marks)

18. Certain types of assets are excluded from a bankrupt's estate such as tools, books, vehicles and equipment required for work or personal use.

Set out four other types or categories of assets which do not form part of a bankrupt's estate.

(4 marks)



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19. A petition for the winding up of Flog It Limited was issued by a creditor on 1 July 2010. After a number of adjourned hearings an Order for the winding up of the company was eventually made on 6 December 2010 following which a partner of your firm was appointed Liquidator of the company by the Secretary of State on 10 January 2011. In the course of your review of the affairs of the company you have identified that between June and August 2010 a number of payments were made to creditors.

What actions can the Liquidator take in respect of these payments?

(4 marks)

20. In certain circumstances application may be made to the Court to review the actions or decisions of a Supervisor of an IVA.

Who may make such an application and what types of order may the Court make?

(4 marks)



PART B

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BOTH QUESTIONS IN THIS SECTION ARE COMPULSORY

21. A partner in your firm was appointed two months ago as Administrator of Summer Limited by Best Bank plc which holds fixed and floating charges over the company's assets created on 20 September 2007. You have been provided with the following receipts and payments account and other information in relation to the case.

Administrator's Receipts and Payments Account

Statement of Affairs £	£	£
Asset Realisation		
160,000	Book debts	30,000
175,000	Freehold property	175,000
10,000	Plant and Machinery	13,846
5,000	Stock	6,924
Uncertain	Goodwill	17,307
10,000	Motor Vehicles	<u>6,923</u>
		250,000
Cost of realisations		
	Statutory disbursements	1,000
	Legal fees	13,500
	Agents' fees	5,000
	Administrator's remuneration	<u>20,865</u>
		<u>(40,365)</u>
	Funds held	<u>209,635</u>

- The amount due to Best Bank plc at the commencement of the Administration was £400,000. There have been no payments to the Bank since the Administrator's appointment.
- At the date of appointment the outstanding book debt ledger stood at £200,000. The directors were not aware of any known bad or doubtful debts, however they considered it prudent that a general provision of 20% be applied against the debts when preparing their estimated statement of affairs. Since the appointment you have discovered that there are certain debtors who have rights of set-off in respect of sums owed to them as creditors of the company, totalling £30,000. Furthermore one debtor who owes £10,000 has recently gone into liquidation with no prospect of a dividend to creditors. The Administrator considers that a 20% general provision against the remaining debts continues to be appropriate.
- Agents are to be instructed to assist in the collection of the remaining ledger for a commission of 10% of sums collected.



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- Shortly after the Administrator’s appointment a sale of the company’s business and assets on a going concern basis was completed as follows:

	£
Freehold property	175,000
Stock	10,000
Plant and Machinery	20,000
Goodwill	25,000
Motor Vehicles	10,000
	<u>240,000</u>

- The consideration in respect of the purchase of the business and assets was payable as follows:

On completion, £175,000 was paid for the purchase of the property and £25,000 was paid as an initial payment against the other assets (apportioned pro rata to the purchase consideration). The balance of the consideration was payable in 2 equal payments of £20,000 on the 1st of each of the following 2 months.

- Agents’ fees of £5,000 have been incurred, 25% of which relates to dealing with fixed charge assets.
- Legal fees of £3,500 have been incurred directly in dealing with the sale of the property. A further £10,000 has been incurred in dealing with the sale and purchase agreement and appointment formalities.
- Insurance costs have been incurred of £1,500 of which £500 directly related to the insurance of the property.
- Employee claims from employees dismissed in the month prior to administration have been received as follows:

	£
Wages	6,800
Holiday pay	8,200
Compensation in lieu of notice	12,500
Redundancy	16,250
	<u>43,750</u>

Wages claims relate to 4 employees owed £1,700 each.

- The following sums are due to HM Revenue and Customs:

VAT	£12,500
PAYE/NIC	£30,000

- According to the directors’ statement of affairs trade creditors are owed £450,000.
- The Administrator’s remuneration has been agreed as follows:

5% of fixed charge realisations
15% of all other realisations



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- The estimated cost of distributing funds to unsecured non-preferential creditors is £3,500.

The Administrator has been asked to provide an update report to the Bank.

- (a) **Prepare an estimated outcome statement providing details of the amounts anticipated to be recoverable by the Bank under its charges, based on the information provided**
(10 marks)
- (b) **Set out the options available for the Administrators in relation to the distributions to unsecured creditors.**
(2 Marks)
- (c) **Based on the information available calculate the estimated dividend to unsecured creditors**
(3 Marks)



22. Mike, who has been running a business on a self-employed basis as a motorbike mechanic, has recently been made bankrupt and your principal has been appointed Trustee. You have been asked to administer the case and have ascertained the following information:
- The bankruptcy order was made on 1st March 2011 on a creditor's petition presented by HM Revenue & Customs in respect of unpaid schedule D tax going back to 2006/07. The amount of the petition debt is in the region of £126,000, some of it based on assessments as Mike has not been good at submitting his accounts and tax returns.
 - The petition was presented on 27 November 2010 and there were two adjournments before the bankruptcy order was made.
 - Mike has other unsecured debts totalling £183,000.
 - Mike is married to Tracey. Before they were married, Mike and Tracey decided that they would sell their own properties and pool their resources to buy a new house to set up home. The new house cost £180,000 and they put down £30,000 each from the sale proceeds of their own properties. Tracey was serving overseas in the forces at the time of the purchase and they decided that the property would be put in Mike's name to make life easier. However it was always intended that they would own the property jointly although they did not make a formal declaration of trust in favour of Tracey. The house was purchased on 30 July 1995 with the balance of the sale price (£120,000) being funded by a mortgage in Mike's name.
 - On Tracey's return from overseas a few months later, the couple married. They set up a joint bank account and all their income was paid into that account. Their household expenses and the mortgage payments were all met from this account. Although their earnings fluctuated from time to time, they both earned similar incomes.
 - In 2007 Mike's mother died and he inherited approximately £160,000 from her estate. The couple had always wanted a holiday home in Devon and this was their chance. Mike ignored the fact that he was in arrears (as usual) with his tax affairs and in October 2008, after he had received his inheritance and using that money, together with Tracey he purchased a small terraced cottage for £150,000. He was able to take advantage of the depressed housing market and got a 'good deal'.
 - It was the couple's intention that the property be owned by them together and accordingly it was purchased by them as joint tenants. They have let the property (through an agent) for much of the time since they bought it and that income (net of all letting costs) has been paid into their joint bank account.
 - Mike and Tracey do not have any other significant assets apart from £6,000 in their joint bank account. You are aware that the current value of the property is in the region of £260,000 and the balance outstanding to the mortgagee is £110,000.



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- (a) Prepare a memo to the Trustee stating with reasons what interest you believe Mike has in the matrimonial home. Clearly state any assumptions. (6 marks)
- (b) Advise the Trustee on Mike's interest in the holiday home. Its value remains in the region of £150,000 and it is free of mortgage or any charges. Is there any way in which the value of Mike's interest which now vests in the Trustee can be enhanced for the benefit of Mike's creditors? If so, state how this could be achieved. (7 marks)
- (c) If there is £6,000 in the joint bank account, comment on whether, and if so how, the Trustee might be able to claim more than a half share of that balance for the estate. (2 marks)



PART C

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ONLY TWO QUESTIONS IN THIS SECTION ARE REQUIRED TO BE ANSWERED

23. Rachel, aged 27, has come to see you for advice about her current financial circumstances. She explains that she has incurred a range of debts with various credit card and loan companies, totalling approximately £40,000 which she is in no position to pay as she has recently lost her job as a legal executive. She is struggling to find a new job but hopes she will find something soon. She owns a residential property jointly with her partner, Craig, who unfortunately has been out of work himself for some months. There is currently no equity in the house as it was purchased with a 100% mortgage shortly before property prices fell. The couple's borrowing has primarily been in Rachel's name because her job was better paid and was thought to be more secure. Craig has no significant liabilities in his name and neither of them have any other assets of any consequence.

Advise Rachel on her main personal insolvency options. In particular you should comment on bankruptcy, IVAs and Debt Management Plans. Also comment on whether a Debt Relief Order may be an appropriate option. Compare and contrast the different insolvency solutions, taking into account Rachel's financial circumstances.
(15 marks)

24. Table Limited was placed into Creditors Voluntary Liquidation in May 2010 and your Principal was appointed Liquidator. A creditors committee was appointed to assist with investigations and various assets were uncovered and realised. The realisation process has now been finalised, however there are insufficient funds available to pay a distribution to any class of creditor.

- (a) **Set out the practical, legal and regulatory steps that need to be taken to close the case.**
(1/2 mark per point up to a maximum of 8 marks)
- (b) **Set out the items which are required by statute to be specified separately on the liquidator's summary of Receipts and Payments contained in his final report.**
(1/2 mark per point up to a maximum of 7 marks)

25. A partner of your firm was appointed as Administrator of Nuts & Bolts Limited on 1 February 2011.

- (a) **Set out the requirements to report to creditors and the contents of the Administrator's progress report to creditors in accordance with the Rules.**
(10 marks)
- (b) **Set out the matters applicable and procedure for creditors to challenge an Administrator's remuneration or other expenses as being excessive under the Rules.**
(5 marks)
-