

JOINT INSOLVENCY EXAMINATION BOARD

*Joint
Insolvency
Examination
Board*

Joint Insolvency Examination

Wednesday 9 November 2016

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 - and marks will not be awarded for extraneous material.

Note: References to legislation are to that which was in force on 30 April 2016. 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. On Friday 28 October 2016 you received a telephone call from the Official Receiver inviting you to accept a Secretary of State appointment as Trustee in Bankruptcy of Giles Corey (“Giles”). The Bankruptcy Order was made on Thursday 27 October 2016 on the petition of a creditor. As Giles had failed to surrender to the proceedings, and had declined to attend upon the Official Receiver for interview, you were informed that the Official Receiver wanted to make an appointment that afternoon and, should you decline the appointment, he would approach the next Insolvency Practitioner on the rota. Based upon the limited amount of information provided to you by the Official Receiver, you decided to accept the appointment.

You have now received the handover documentation, and a review of this shows that Giles is or was the owner of a portfolio of buy to let properties. It is not clear from the limited information available precisely how many buy to let properties are currently owned by Giles, although it is apparent that he has owned more than 25 such properties within the last 12 months, either solely or jointly with others.

There has been considerable local press coverage of the Bankruptcy, and your assistant has already received several telephone calls from individuals claiming to be tenants, asking what they should do. They told your assistant that Giles had called them and demanded that they continue to pay rent to him, in cash. Some of these individuals indicated that they are in receipt of Housing Benefit.

You have been told that Law of Property Act Receivers have been appointed over some of the properties, but again the position is unclear.

Requirements

- (a) Explain what enquiries you would make and what records you would keep in the first month following your appointment in order to establish the extent of the property portfolio and the current position regarding each property. (15 marks)**
- (b) Describe the practical steps you and your team would take to secure your interest in the property portfolio for the benefit of the bankruptcy estate. (4 marks)**
- (c) Explain the position regarding the payment of rent by tenants of a landlord who has been made bankrupt and what you would say to the tenants who have called. (6 marks)**

Total: (25 marks)

2. You are a Senior Manager in the employ of Samuel Parris (“Samuel”), an Authorised Insolvency Practitioner. Samuel was appointed as Trustee in Bankruptcy of John Proctor (“John”) on 28 May 2015, following the making of a Bankruptcy Order on 8 April 2015 on John’s own petition.

Following a recent file review, Samuel pointed out that the basis of his remuneration had yet to be agreed. He added that he had received a number of calls from creditors following the issuing of the annual progress report to creditors a couple of months ago, enquiring as to dividend prospects.

The current position regarding the assets in the bankruptcy estate is as follows:

- Agreement was reached for John’s wife to purchase the interest in the family home and the agreed amount of £55,000 was paid to Samuel’s solicitors in February 2016. The necessary paperwork to assign Samuel’s interest in the property was completed and accordingly the funds were remitted to the bankruptcy estate, net of legal fees of £1,200 plus VAT.
- John has agreed to make payments from his income of £350 per month for a period of 3 years pursuant to an Income Payment Agreement which was signed in September 2015. Payments are made on the last day of each month and are up to date. So far, £4,900 has been received.
- John had been the sole owner of an investment property that he had bought in 2009 for £65,000. Shortly after Samuel’s appointment, the mortgagee repossessed the property following non-payment of the mortgage. The property was sold by the mortgagee in March 2016 for £98,000 but, as a result of mortgage arrears and costs, there remains an amount due to the mortgagee of £6,400.

There are no other known assets.

Creditors’ claims received to date have been agreed as follows:

	£
Bank overdraft	1,410
Credit cards (x3)	17,360
Utilities	235
Loan from parents	20,000

To date, a total of 44 hours have been spent in administering the bankruptcy at an average hourly rate of £135. Disbursements of £300 (excluding VAT) have been incurred to date.

John was not registered for VAT.

Requirements

- (a) Prepare a briefing note for Samuel outlining what steps need to be taken, and when, in order to obtain approval for the basis of his remuneration. Your note should include details of the different bases upon which his remuneration can be calculated. (7 marks)
- (b) Clearly stating any assumptions that you have made, prepare an Estimated Outcome Statement and calculate the likely dividend to creditors. (18 marks)

Total: (25 marks)

3. You are an Authorised Insolvency Practitioner and a partner in a small firm of Accountants.

A solicitor contact has asked you to assist a valued client of hers, Thomas Putnam (“Thomas”). In June 2014 Thomas had given £86,000 personally to Mary Warren (“Mary”) to invest on his behalf. Thomas had become concerned about the whereabouts of his funds and had begun to pursue Mary for recovery through the Courts. Mary subsequently presented her own Bankruptcy Petition on 30 October 2015, and a Bankruptcy Order was made on the same day.

George Herrick (“George”), who is also an Authorised Insolvency Practitioner and who is a partner in another local firm, was appointed as Trustee in Bankruptcy of Mary on 19 November 2015 by the Secretary of State.

Thomas is upset at the loss of his own money but also feels a responsibility to other members of his own family who were introduced to Mary by him and who have also lost investment monies which they can ill afford to lose. Thomas wants to ensure that their interests are represented. Thomas has been less than impressed by the quality and quantity of information which has been provided to him by George and by George’s apparent lack of willingness to investigate any of the information that Thomas has provided to him.

The Official Receiver’s Report to Creditors, which was based upon information provided by Mary, showed the following position as at 30 October 2015:

	£	£
Cash in hand		5,000
Bramble Cottage	500,000	
Due to ABC Bank	<u>(510,000)</u>	
		0
Retail Units at Fairways	270,000	
Due to XYZ Bank	<u>(275,000)</u>	
		<u>0</u>
Total Assets		5,000
Unsecured creditors’ claims		<u>(30,000)</u>
Shortfall to unsecured creditors		<u>(25,000)</u>

A note in the Official Receiver’s Report explained that a family member had provided the sum of £5,000 to meet the costs of the bankruptcy estate.

George has reluctantly now provided the following Receipts and Payments Account to Thomas:

	£	£
Receipts and Payments Account to 31 October 2016		
Cash in hand		5,000
Less:		
Valuation fee	(45)	
Land Registry fees	(44)	
Official Receiver’s costs	<u>(1,100)</u>	
		<u>(1,189)</u>
Balance		<u>3,811</u>

In addition, George has informed Thomas that a 90 day forced sale valuation of Bramble Cottage has been obtained and, as there is no equity, he intends to accept a nominal sum to relinquish his interest. George has not provided Thomas with any other information and has told him he will need to wait for the Annual Progress Report which will provide Thomas with everything he needs to know.

Thomas tells you that:

- Bramble Cottage is on the market at present. He has viewed the Home Report on the internet and it shows an asking price of £600,000;
- Mary appears to have returned to teaching: she is an Assistant Head Teacher at the local primary school (Thomas has seen this on the school's website);
- Mary's Facebook page suggests she spends long holidays in an upmarket Spanish coastal holiday resort; and
- Mary drives a Range Rover Evoque with a personalised number plate.

George is currently on holiday but has agreed that, upon his return, he will meet Thomas next week to discuss the Bankruptcy. Thomas would like you to attend the meeting with him.

Requirements

- (a) **Based on the information provided to you, prepare a structured list of issues and questions that you would like to discuss with George. (18 marks)**
- (b) **Outline the steps which Thomas could take if, following the meeting next week, he remains dissatisfied with the progress of the Bankruptcy and the actions of George. (7 marks)**

Total: (25 marks)

PLEASE TURN OVER

4. You are an Authorised Insolvency Practitioner. A Partner in your firm has asked you to advise his client, Miss Abigail Williams (“Abigail”), who is struggling to pay her debts. From a brief conversation with the Partner, you ascertain the following information about Abigail’s financial position:

Assets

	£
Equity in solely owned property	45,000
Premium Bonds	6,000
Car	4,500

Liabilities

	£
Credit cards	9,000
Bank overdraft	1,550
Student loan	13,000

Abigail is the sole director and shareholder of a limited company which supplies office furniture. She draws remuneration from that company of £2,000 per month (gross).

Requirements

- (a) **Set out the ethical and regulatory matters that you would need to consider before accepting any instructions to advise Abigail. (4 marks)**
- (b) **Explain the various statutory and non-statutory procedures that might be available to Abigail to resolve her difficulties. (14 marks)**
- (c) **Advise Abigail which procedure is most likely to be applicable to her. You should explain what further information you would require in order to advise her more fully and set out any assumptions which you have made. (7 marks)**

Total: (25 marks)

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