

JOINT INSOLVENCY EXAMINATION BOARD

*Joint
Insolvency
Examination
Board*

Joint Insolvency Examination (Scotland)

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 - 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 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 are an Authorised Insolvency Practitioner. A solicitor contact has recently requested your consent to act as Trustee in the Sequestration of Giles Corey ("Giles").

On Friday 28 October 2016 you are appointed as Trustee of Giles by the Sheriff Court following a petition made by your solicitor contact on behalf of a creditor.

Before consenting to act, you had carried out a limited search of the Land Register which had identified one property in Giles' name which appeared to be his home address. However, you have now received limited documentation which was held by the petitioning creditor, and a review of this shows that Giles is or was the owner of a portfolio of buy to let properties in various areas which you had not previously searched on the Land Register. 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 Sequestration, 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 calling up procedures have been instigated in relation to 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 sequestrated 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 the Sequestration of John Proctor (“John”) on 3 November 2015. John had applied for his own bankruptcy.

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 recent call from a creditor enquiring as to dividend prospects.

The current position regarding the assets in the sequestrated 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 legal agents in June 2016. The necessary paperwork to assign Samuel’s interest in the property was completed and accordingly the funds were remitted to you net of legal fees of £1,200 plus VAT.
- A Debtor’s Contribution Order of £350 per month had been set by the Accountant in Bankruptcy at the date of Award. Payments are made on the 29th day of each month. So far, £3,500 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 secured lender had repossessed the property following non-payment of the mortgage. The property had been sold by the secured lender in March 2016 for £98,000 but, as a result of mortgage arrears and costs, there was a shortfall to the secured lender 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 sequestration at an average hourly rate of £135. Disbursements of £400 (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 reported this to Police Scotland and had begun to pursue Mary for recovery through the Courts. Mary subsequently applied for her own bankruptcy and an award of sequestration was made on 30 October 2015.

George Herrick (“George”) who is also an Authorised Insolvency Practitioner and who is a partner in another local firm, was appointed as Mary’s Trustee.

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 Thomas has provided to him.

The Trustee’s Report to Creditors showed the following Estimated Outcome Statement as at 30 October 2015:

	Note	£	£
Cash in hand	1		5,000
Bramble Cottage	2	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 creditor claims			<u>(30,000)</u>
Shortfall to unsecured creditors			<u>(25,000)</u>

Notes:

1. A member of Mary’s family has provided the sum of £5,000 to meet the costs of the bankruptcy estate.
2. A 90 day Forced sale valuation has been obtained. As there is no value in Bramble Cottage it has been agreed that the Trustee will accept a nominal sum to relinquish his interest.

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

**Trustee's Receipts and Payments Account
to 30 October 2016**

	£
Cash in hand	5,000.00
Bramble Cottage	500.00
Valuation	(45.00)
Registers of Scotland	(15.00)
Statement of Affairs preparation	(850.00)
	<hr/>
Cash in current account	4,590.00

George has not provided Thomas with any other information.

Thomas tells you that:

- Bramble Cottage is on the market at present. He has viewed the Home Report on the internet and it shows a value of £600,000;
- Mary appears to have returned to teaching: she is an Assistant Head Teacher of 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 Sequestration. 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 Sequestration 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 act on behalf of 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)

