

JOINT INSOLVENCY EXAMINATION BOARD

*Joint
Insolvency
Examination
Board*

Joint Insolvency Examination (Scotland)

Wednesday 8 November 2017

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 2017. References to 'the Act' are to the Bankruptcy (Scotland) Act 2016.

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 1 November 2017 you were appointed as Trustee in the Sequestration of Tom Robinson (“Tom”) and also of his wife Helen Robinson (“Helen”). Following an initial meeting with you two weeks previously, Tom and Helen had made separate applications for their bankruptcy to the Accountant in Bankruptcy and nominated you to act as Trustee.

From information contained within their respective applications, you have now identified that Tom and Helen traded in partnership as a shop, selling fruit and vegetables, and various gardening tools and products, under the trading style of “Robinson’s Rhubarb” (“the Partnership”).

From further discussions with Tom and Helen, you have established the following:

- (i) the Partnership trades from freehold premises at 14 Atkinson Street (the “Property”), which is jointly owned by Tom and Helen. The Property comprises the shop premises, together with a flat above the shop which is occupied by Helen’s elderly mother;
- (ii) apart from Tom and Helen, the Partnership employed 2 full time members of staff, who have worked for the Partnership for many years; and
- (iii) the supplier of the weed-killer and fertilizer products sold in the shop has not been paid for several months and has contacted Tom to request the return of his stock. Tom has asked if he can agree to this request.

You have also been provided with the following documents;

- a copy of the Partnership tax return for the year ended 5 April 2016;
- copies of the Partnership accounts for the last 3 years; and
- a copy of an assured shorthold tenancy agreement with Helen’s mother, which provides for rental payments of £500 per month.

Requirements

- (a) **Set out the legal issues that arise following your appointments as Trustee of Tom and of Helen, how these issues could be resolved and the actions that you would need to take following your appointment to identify and deal with the assets of the bankruptcy estates. (16 marks)**
- (b) **Explain the process by which dividends are paid in a partnership estate and associated individual estates, with particular reference to the interaction between the partnership estate and the associated separate estates. (4 marks)**
- (c) **Explain how you would determine whether a course of Financial Education was appropriate for Tom or Helen and if it was, what this would entail. (5 marks)**

Total: (25 marks)

2. You are an Authorised Insolvency Practitioner. You have been appointed as Trustee in the Sequestration of Robert Ewell ("Robert"). Your appointment was by the Sheriff Court following a petition by a creditor. You have since received credible information from an anonymous caller who informed you that Robert owns significant assets but declined to provide any further information.

Robert has failed to co-operate with you as Trustee or to respond to any of the correspondence that has been sent to him.

Requirements

Set out the steps you would take, and the powers available to you generally, to

- (a) secure Robert's co-operation. (5 marks)**
- (b) identify any assets owned by Robert, explaining how you might secure those assets to prevent their dissipation. (20 marks).**

Total: (25 marks)

3. You are an Authorised Insolvency Practitioner. Yesterday you met Jean Chapman (“Jean”), the owner of Maycomb Manor, a small hotel situated just outside the coastal village of Maycomb. Maycomb Manor is a well-established functions venue, predominantly catering for weddings and it has 10 bedrooms available for let, together with a restaurant/bar that is open to the public.

Jean has been referred to you by a tax partner within your firm who has been assisting her with a three year HMRC investigation in relation to historic income tax owed on royalties earned overseas. The tax partner’s view is that the tax liability now established of £600,000 (including interest and penalties) is not capable of being reduced further.

Jean has been aware for some time that Maycomb Manor will have to be sold to repay the HMRC debt and reluctantly arranged for it to be marketed during the summer of 2017 through a reputable national agent at offers around £900,000. An offer in the sum of £850,000 was received from Charles Harris (“Mr Harris”) in August 2017. This was accepted on the recommendation of the agent who believed that it was a fair offer based on the fact that a small amount of renovation works is required to the building.

Issues with Mr Harris’ funding have delayed completion of the sale; however, he has now confirmed that he has an offer of funding and his lawyers advise that he will be in a position to complete on Monday 8 January 2018. HMRC appear to have become increasingly frustrated at the delays and the lack of any payment and have served a charge for payment.

Maycomb Manor is solely owned by Jean and it is unencumbered. HMRC are Jean’s only creditor with the exception of ongoing trade suppliers, who have always been paid in accordance with their normal terms of business.

Jean is very keen to be able to continue to trade and to complete the sale. The period prior to Christmas is normally a very busy and profitable one for Maycomb Manor. The agent has advised Jean that, if Maycomb Manor were to be closed, their estimate of its value would reduce by £300,000. They attribute this to the damage that would be done to the functions business through cancellations, the costs required to re-establish the business if “mothballed” and the inevitable reduction in price in a forced sale.

Jean tells you the following:

- functions bookings are currently very healthy, with 3 per week scheduled in each of the next 8 weeks. There are 2 additional functions booked in each of the weeks commencing 11 and 18 December to cater for some local business Christmas parties;
- on average a function will generate takings of £3,000 from food and £1,500 from the sale of drinks;
- bedrooms are let for £100 per night and Maycomb Manor has an average occupancy of 50%. This will increase to 80% in the weeks when there are additional Christmas functions;
- the restaurant generates takings of £3,000 per week. Jean expects that this will rise to £4,500 in the 3 weeks commencing 18 December;
- the bar generates takings of £1,000 per week. Jean expects that this will rise to £1,500 per week in the 3 weeks commencing 18 December;
- 60% of Maycomb Manor’s takings are by credit card. Funds are transferred on the same day. There is a daily fixed fee of £50 charged by the bank for the card facility;
- all bar stock is provided by Scotia Breweries who deliver to Maycomb Manor on a regular basis and daily if necessary. They are paid a week after delivery. Food suppliers are paid 14 days after delivery;

- the cost of bar and drinks is 20% of sales but the gross profit percentage made on food is lower at around 70%;
- all staff are paid weekly a week in arrears. The net wages bill for the core staff is £4,500. For each function Jean will increase her core staff by 4 temporary staff, at a gross cost each per shift of £50;
- the effective rate at which PAYE/NIC has been paid recently is 23.5%;
- Jean has been accustomed to drawing £500 per week in cash from the business for her own needs;
- there is a cash float in the safe of £2,500;
- Jean's business bank current account has a positive balance of £15,000; and
- payments for utilities and overheads are made in the last week of every month as follows:

- Electricity	£1,200
- Gas	£ 800
- Water	£ 300
- Telephone/broadband	£ 200
- Business rates	£ 700
- Insurance	£ 600
- Laundry	£ 200

Requirements

- (a) Prepare a weekly cash flow forecast for the 8 week period beginning on Monday 13 November 2017 and ending on the proposed date of completion of the sale to Mr Harris. Clearly state any assumptions that you have made. (18 marks)**
- (b) Explain, in the circumstances, what Jean should do. (7 marks)**

Note: ignore VAT

Total: (25 marks)

4. You are an Authorised Insolvency Practitioner. You were appointed as Trustee in the Sequestration of Arthur Radley (“Arthur”) by the Sheriff Court on 28 September 2017. Following a petition by a creditor, Warrant to Cite the debtor was granted on 11 August 2017.

Your initial enquiries have revealed the following:

- (i) Arthur had previously traded as an IT repair shop, specialising in repairing laptops, tablets and mobile phones. Unfortunately, Arthur’s father was diagnosed with a terminal illness in January 2017, and Arthur closed his business immediately following the diagnosis, in order to look after his father. The business had traded from premises which were leased from Walter Cunningham (“Walter”). At the time the business closed, Arthur owed 2 months’ rent and he has not been in contact with Walter since the closure. Walter has contacted you to ask what is happening with the premises and the outstanding rent.
- (ii) At the time of the closure of the business Arthur had a considerable quantity of laptops and other IT equipment in his possession. He removed all of the items from the premises. Anything that was being repaired for customers was returned to them irrespective of the state of the repair, because Arthur did not wish to complete any outstanding work as he wanted to devote his time to caring for his father. Arthur’s trading policy was that the full cost of repairs was paid for up front, and therefore there were no amounts due to Arthur.
- (iii) There remained on closure a considerable amount of residual equipment, all of which belonged to Arthur, including numerous laptops, mobile phones and other items which he had acquired over the years. There were also some tools and a stock of generic replacement parts which he had used for repairs. Arthur’s son, Nathan Radley (“Nathan”) had expressed an interest in continuing the business, so in February 2017 Arthur gave Nathan all of the items that remained together with details of all of his customers so that Nathan could contact them to see if they wanted Nathan to complete any repairs that Arthur had started but failed to finish.
- (iv) Arthur’s father passed away on 1 October 2017.
- (v) In the Statement of Assets and Liabilities which he has provided, Arthur confirmed that, following the closure of his business, he has been living on state benefits. Following the breakdown of his marriage many years ago, Arthur had lived in various rented properties, but in January 2017 he had moved in to his father’s property, and he continues to reside there. Arthur’s mother had passed away some years previously. Arthur had disclosed the following assets:
 - a) a motor vehicle which he had purchased from new in 2014 for £14,000, which he considers is now worth £7,000;
 - b) premium bonds of £50;
 - c) an endowment policy which is due to mature in July 2018, but which has a current surrender value of £22,000. Arthur had originally taken out this policy as collateral security for a mortgage when he purchased a property in 1993, but upon the sale of that property in 2002 the mortgage had been redeemed in full from the sale proceeds and he had continued to pay the premiums on the policy as a means of savings; and
 - d) a personal pension policy with a current plan value of £150,000.

Last week, you had a meeting with Arthur at which he told you the following:

- his father had suffered from a hereditary condition and, although he (Arthur) was fit and well, Arthur was worried that he might develop the same condition. Therefore, on 19 September 2017 Arthur had written to the endowment policy provider enclosing an “Expression of Wish” form in which he had requested that all benefits from the endowment policy be paid to Nathan;
- Arthur’s date of birth is 31 July 1957;
- he is an only child; and
- his marriage ended approximately 20 years ago, when Nathan was 3 years old, and the financial aspects of the divorce were finalised shortly thereafter.

Requirements

Clearly stating any assumptions that you make, and making reference to relevant case law and statute, set out the issues that arise, the actions you would take and what further information you would need to obtain in order to address the matters of which you have become aware.

Total: (25 marks)

