

JOINT INSOLVENCY EXAMINATION BOARD

*Joint
Insolvency
Examination
Board*

Joint Insolvency Examination

Wednesday 4 November 2015

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 2015. 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.

You were appointed as Trustee in Bankruptcy of John Herbert ("John") by the Secretary of State on 20 October 2015, following a bankruptcy order made on 8 September 2015 on John's own petition. John attributes his insolvency to living beyond his means.

On reviewing the preliminary questionnaire completed by John for the Official Receiver prior to your appointment, you established the following:

- John currently lives with his wife in rented accommodation. He pays rent of £500 per month to his landlord, who lives and works abroad. John and his wife have lived in this same property for 6 years and the tenancy agreement provides that 2 months' notice must be given on either side if the tenancy is to be brought to an end. John and his wife have no wish to move
- John and his wife have no children
- After many years working in the local branch of a high street bank, John now works as an Assistant Manager at the local DIY store and earns a gross salary of £24,000 per year. After tax, his net take home pay is, on average, £1,600 per month.
- John's wife works part time as a Librarian and earns a gross annual salary of £10,000
- John's date of birth is 23 October 1960.
- John's liabilities amount to £26,500 and are primarily made up of credit card debts and loans from various financial institutions.

John has completed a monthly Income & Expenditure Questionnaire which shows the following:

	£	£
Income (net of tax)		1,600
Expenditure		
Rent	500	
Food & drink, including entertaining friends and going out	400	
Gas, electricity and water	100	
Household expenditure	80	
Clothing	80	
Motor expenses – self	60	
Motor expenses – wife	30	
Council tax	125	
Credit card instalments	85	
Loan repayments	110	
Fines/costs following driving conviction	40	
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Total expenditure		1,610

Requirements

- (a) **Giving your reasons and detailing any further enquiries you would make, calculate the amount which you should seek as contribution from income. Explain the mechanism(s) by which such contributions could be secured and the period(s) over which any contributions should be made. (18 marks)**

You have recently received correspondence from a life assurance company confirming that, for many years, John has contributed to an approved personal pension scheme (the "Pension"). The fund value currently amounts to £285,000.

Requirements

- (b) Explain, in view of the existence of the Pension, the actions you would take regarding the future administration of John's bankruptcy. (7 marks)**

Total: (25 marks)

2(a) You are a Manager in the employment of Joe Swanson ("Joe"), an Authorised Insolvency Practitioner.

Joe was appointed as Trustee in Bankruptcy of Thomas Tucker ("Thomas") on 4 September 2013, following the making of a Bankruptcy Order made on the petition of a creditor. Prior to Joe's appointment, Thomas had informed the Official Receiver that he was not served with the Bankruptcy Petition and had no knowledge of the petition debt. The Official Receiver allowed Thomas a period of 6 weeks in which to take appropriate advice, but in the absence of any further communication, The Official Receiver applied to the Secretary of State for Joe's appointment.

The only asset in the bankruptcy estate is an interest in a solely owned property, which has equity of £35,000. Following Joe's appointment, there was a prolonged period during which there was no response from Thomas to any of the correspondence sent to him. This culminated in Joe making a Court application for possession and sale of the property.

The first hearing of Joe's application took place 2 weeks ago. At the hearing, Thomas informed the Court that he intended to make an application for the annulment of the Bankruptcy Order on the ground that it ought not to have been made. The Court adjourned Joe's application to allow Thomas the opportunity to make his own application. This morning, you received notice that Thomas has indeed made an application to annul.

Requirements

In the light of Thomas's application, prepare a memorandum setting out Joe's position. Describe what will be expected of Joe by the Court and advise Joe of the actions he should take generally. (8 marks)

2(b) In an entirely separate matter, Joe was appointed as Trustee in Bankruptcy of Mrs Carol West ("Carol") on 1 July 2015. Carol was made bankrupt on 6 May 2015 on the petition of HMRC, in respect of amounts due under self-assessment. The petition was presented on 4 March 2015.

Shortly before the Bankruptcy Order was made, Carol's elderly, unmarried Godmother died, leaving her entire estate, valued at £220,000, to Carol. Unfortunately for Carol, probate over her Godmother's estate was not obtained in time for funds to be released to avoid the Bankruptcy Order being made. The petition debt was £3,200 and in addition, HMRC is claiming payment of the costs of the petition amounting to £1,450 (including all fees and deposits).

You are unaware of any other assets.

Carol's other debts (as at the date of the Bankruptcy Order) are as follows:

	£
Credit cards (x3)	4,370
Bank loan	8,105
Bank overdraft	190
Store cards (x4)	7,940
Student Loan	13,300
Loan from Husband	10,000

At a recent meeting of creditors, Joe's remuneration was agreed on the basis of the time properly spent by him and his staff in attending to matters arising in the bankruptcy. A resolution was also passed approving the recovery of category 2 disbursements.

As at today's date, Joe's time costs amount to £4,620 and disbursements of £380 have been incurred.

Carol has informed you that the executor of her Godmother's estate has confirmed that probate has now been obtained, and that funds of £200,000 will be available before the end of the year. Carol has

therefore made an application to Court for the annulment of the Bankruptcy Order pursuant to Section 282(1) (b).

Carol has asked you to tell her what funds are likely to be available to her in the event that her application is successful.

Requirements

- (a) Calculate the estimated amount required to pay the bankruptcy debts and the expenses of the bankruptcy in full, and estimate the surplus funds that will be available to Carol. Clearly state any assumptions that you have made. (10 marks)**
- (b) Draft the Trustee's report to Court. (7 marks)**

Total: (25 marks)

3. You are an Authorised Insolvency Practitioner.

Yesterday, you were approached by Muriel Goldman ("Muriel") whose husband has recently been made bankrupt. Muriel jointly owns the family home (the "Property") with her husband. They have been married for 25 years during which time she has had a number of different jobs, interspersed with periods when she took time away from work to bring up their 2 children, both of whom have now left home.

The Property is valued at £450,000 and is subject to a mortgage of £220,000 and a second charge of £105,000. Muriel told you that the second charge was in respect of a loan taken out to fund her husband's business, which subsequently collapsed leading to her husband's bankruptcy.

Muriel's husband's Trustee in Bankruptcy has written to her inviting her to purchase her husband's share of the equity in the Property for the sum of £62,500.

Requirement

Write a letter to Muriel. In your letter, you should

- (a) explain the different ways in which property may be owned jointly, and the effect that this may have on the calculation of Muriel's share of the equity in the Property (5 marks)**
- (b) discuss, with reference to relevant case law, the overall equity position and the extent of Muriel's interest in the Property, setting out what further information you may require, (16 marks) and**
- (c) stating your reasons, advise Muriel of the amount she should initially offer for her husband's interest in the Property (4 marks).**

Total: (25 marks)

4. You are an Authorised Insolvency Practitioner.

On 4 March 2015, you were appointed as Supervisor of an Individual Voluntary Arrangement (“IVA”) proposed by Elmer Hartman (“Elmer”). The IVA proposal, which was drafted in accordance with the latest R3 Standard Conditions but is not compliant with the IVA Protocol, was properly approved at a meeting of creditors. The proposal provides for Elmer to make regular monthly contributions of £500 for a period of 5 years, with the first contribution being due in the month after approval. There are no other assets included in the IVA.

Elmer lives alone in a property (“the Property”) which he solely owns and which is subject to a mortgage in favour of Spooner’s Bank Ltd (“the Bank”). The Property is valued at £275,000 and the amount due to the Bank is £287,500.

To date, Elmer has made 5 monthly contributions, but has not made a payment in either of the last 2 months. He telephoned you when he missed the first payment, to inform you that his employment circumstances have changed and his income has been significantly reduced as a result. He told you that he does not expect this situation to change in the foreseeable future. Elmer asked that the IVA be varied so that his payments would restart on 1 December 2015 and that they should be fixed at a reduced level of £100 per month for the remaining 55 payments. Elmer was adamant that £100 per month is the maximum amount he is prepared to contribute for the remainder of the IVA and, if not agreed, Elmer stated that he will not be able to continue with the IVA.

In accordance with the IVA proposal and the R3 Standard Conditions, you have convened a meeting of creditors to consider varying the terms of the IVA as requested by Elmer.

In advance of the creditors’ meeting you have received the following proxies:

Creditor	Claim (£)	Vote	Form of Vote
The Bank	287,500	Accept	Faxed proxy for Chairman
Pewterschmidt Finance (loan)	9,300	Reject	Paper proxy for Chairman
Mrs Hartman	40,000	Accept	Paper proxy for Chairman
HMRC	10,900	Reject	Paper proxy for Chairman
Brian Griffin	11,600	Accept	Faxed proxy for Chairman

A further creditor, Jillian Russell who has lodged a claim for £18,000, has contacted you to advise that she will attend the meeting in person.

You are also aware of the following:

1. Mrs Hartman is Elmer’s elderly mother, who loaned him various amounts over the 4 years leading up to the approval of the IVA.
2. Jillian Russell is Elmer’s former girlfriend. She loaned him money to pay the deposit on a previous property, but they split up prior to the completion of the purchase and the loan was not repaid.
3. Brian Griffin is a close friend of Elmer and loaned him £10,000 on 1 December 2014 to pay various pressing creditors and to defray some day-to-day living expenses. Elmer signed an agreement on 1 December 2014 which provided for the repayment of the loan at the end of a 2 year period, together with simple interest at 8% per annum. No repayments of capital or interest have been made.
4. The Bank has not surrendered its security.

Requirements

- (a) Explain the voting process to be followed at the creditors' meeting. Giving your reasons, explain how you would treat each vote (12 marks)
- (b) Based purely on the votes made by proxy, state whether the variation proposed by Elmer would be approved or rejected. Give your reasons for reaching this conclusion (5 marks)
- (c) On the assumption that Jillian Russell attends and votes to reject the variation, explain what steps you should take as Supervisor and explain how the costs of the IVA will be discharged. (8 marks)

