

Wednesday 13 November 2019

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## PERSONAL INSOLVENCY (3.5 hours)

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This exam consists of **four** questions (100 marks).

### Marks breakdown

Question 1	20 marks
Question 2	20 marks
Question 3	20 marks
Question 4	40 marks

1. Please read the instructions on this page carefully before you begin your exam. If you have any questions, raise your hand and speak with the invigilator before you begin.
2. Please alert the invigilator immediately if you encounter any issues during the delivery of the exam. The invigilator cannot advise you on how to use the software. If you believe that your performance has been affected by any issues which occurred, you must request and complete a candidate incident report form at the end of the exam; this form must be submitted as part of any subsequent special consideration application.
3. Click on the **Start Test** button to begin the exam. The exam timer will begin to count down. A warning is given five minutes before the exam ends. When the exam timer reaches zero, the exam will end. To end the exam early, press the **Finish** button.
4. You may use a pen and paper for draft workings. Any information you write on paper will not be read or marked.
5. 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.
6. Ensure that all of your responses are visible on screen and are not hidden within cells. Your answers will be presented to the examiner exactly as they appear on screen.

## Question 1

You were appointed as the Trustee in the sequestration of Deidre Lawrence on 1 October 2019, following Warrant to cite Mrs Lawrence being issued on 16 August 2019.

Mrs Lawrence is 73 years old. She is the sole owner of a property in Carpenter Street. Mrs Lawrence's son who is aged 45 also lives in the property. He is severely disabled and dependent upon Mrs Lawrence who provides him with full time care. Mrs Lawrence's only income is the state pension.

You have obtained a desktop valuation of the property which indicated that the property has an estimated value of £250,000. There is one standard security registered against the property in favour of Lassiter's Loans. Having made enquiries of Lassiter's Loans you have established that the security relates to an equity release plan taken out 7 years ago. The amount currently outstanding is £134,300. Interest is compounded annually and is accruing at a fixed rate of 6% per annum. Mrs Lawrence is not obliged to make any payments in relation to interest.

The property is the only asset of which you are aware. You estimate, based on known creditor claims, that the total amount needed to discharge the liabilities of the sequestrated estate is £115,000.

### Requirements

- (a) Set out the steps that you should take to secure your interest in the property. Explain how you would realise your interest in the property taking into account the specific circumstances of the case. **(15 marks)**
- (b) Explain the steps that you should take if you receive a letter of complaint from Mrs Lawrence regarding your actions. What steps could be taken by Mrs Lawrence if she does not feel that her complaint has been addressed by you? **(5 marks)**

**Total: 20 marks**

## Question 2

Philip Robinson is the only remaining Authorised Insolvency Practitioner at Ramsay & Co which is a 10 partner general accountancy practice. Mr Robinson would like to reduce his hours so that he only works 3 days a week with a view to retiring within the next 2 years. Mr Robinson currently holds 75 insolvency appointments all of which are in his sole name.

### Requirements

- (a) Set out the arrangements that an only remaining Authorised Insolvency Practitioner such as Mr Robinson should make regarding succession planning generally. **(12 marks)**
- (b) What additional steps will Mr Robinson need to take in advance of his retirement? **(5 marks)**
- (c) Other than retirement, what are the other circumstances in which an Authorised Insolvency Practitioner might cease to act in relation to formal insolvency appointments? **(3 marks)**

**Total: 20 marks**

### Question 3

You are an Authorised Insolvency Practitioner. You have just had a meeting with a James Mangle. Mr Mangle made an appointment to see you urgently as a result of his having received a telephone call from an Agent acting on behalf of the Accountant in Bankruptcy yesterday afternoon. Mr Mangle was advised by the Agent that he had been made bankrupt and the Accountant in Bankruptcy had been appointed as his Trustee following a petition presented by HMRC in respect of unpaid VAT and self-assessment tax. Mr Mangle's liabilities to HMRC total £26,400.

During the meeting Mr Mangle advised you that, although he remembers being served with a petition, he was busy at work and forgot to do anything with it.

Mr Mangle runs a pub, the Erinsborough Tavern. The premises licence and lease of the pub are held in his sole name. The leased premises include a small flat above the pub in which Mr Mangle lives with his wife.

The Agent on behalf of the Accountant in Bankruptcy told Mr Mangle that he must stop trading immediately. Mr Mangle closed the pub yesterday but is reluctant to keep it closed for too long in case he loses customers.

Mr Mangle advised you that his only asset of any value is a balance of around £1,700 held in his business bank account. The majority of the stock at the pub is held on a sale or return basis. The pub's profits enable Mr Mangle to draw an income of between £1,000 and £1,500 a month.

Although much of the amount due to HMRC is overdue, all suppliers have to date been paid within agreed terms of business.

Mr Mangle advises that his wife's mother died recently and she is expected to inherit c£30,000.

At the conclusion of the meeting you agreed to write to Mr Mangle setting out your advice.

### Requirements

Write a letter to Mr Mangle. In your letter:

- (a) Explain to Mr Mangle whether he is obliged to continue to follow the Accountant in Bankruptcy's Agent's instructions to cease trading and close the pub. Explain any implications for Mr Mangle if he fails to do as the Agent has instructed. **(2 marks)**
- (b) Set out the consequences for Mr Mangle of an Award of Sequestration having been made against him. **(6 marks)**
- (c) In light of his circumstances, set out the options that are available to Mr Mangle, clearly giving your advice as to how he should proceed. As part of providing this advice, set out the practical next steps to be taken. **(12 marks)**

**Total: 20 marks**

## Question 4

You are an Authorised Insolvency Practitioner.

Yesterday you were appointed as Trustee in the sequestration of the partnership of the Pet Emporium. A petition for sequestration had been presented by the local council which is owed £22,154 in respect of unpaid business rates. The Pet Emporium is a partnership between Sarah Scully and Fiona Scully.

You met Sarah Scully today at the premises of the Pet Emporium which is located in a Victorian terrace in the city centre. The Pet Emporium sells high end animal hutches, pet food and accessories and a variety of small animals and birds, with Chinchilla rabbits being a speciality.

Sarah explained that she and her sister Fiona had inherited the business following the death of their father around 20 years ago. Fiona had managed the business on a day to day basis. Sarah lent a hand at peak times but was kept very busy with her full-time job as a property solicitor. Unfortunately, Fiona was involved in a serious road traffic accident around a year ago and due to her injuries has been unable to return to the business since.

Sarah had reduced her hours at work to care for her sister and to keep an eye on The Pet Emporium. However, it had proved impossible for her to juggle these additional responsibilities with her own family commitments. When it had become clear that Fiona was not going to recover fully, the sisters had taken advice from Melbourne Properties and put the business up for sale as a going concern at offers over £500,000. There has been little interest in the business as a going concern in the 6 months it has been on the market. Melbourne Properties attribute the lack of interest to the decline of the High Street in favour of out of town retail parks and the effect of on line shopping.

During a brief conversation earlier today with the manager at Melbourne Properties he advised you that the most realistic prospect is now a sale of the premises alone. The manager estimates that the premises would sell for redevelopment at around £380,000. A fee of 2% of the sales price has previously been agreed. Bishops' Bank has a standard security over the property and an all sums security. The outstanding bank loan is £320,000, considerably more than the £220,000 at which the property was valued when it was inherited. It appears that additional bank borrowings secured against the property have been funding on-going trading losses.

Sarah understands that the business will have to close but is keen to maximise the sums realised for the assets to, if possible, repay creditors in full. She would like the business to keep trading through the period up to Christmas to dispose of the remaining stock in an orderly way and for the maximum possible price.

Sarah has been reviewing the stock and through discussions with her and your agent you ascertain that:

- The stock in the shop has a cost price of £57,000;
- Mark up is generally 50% of selling price;

- Both Sarah and your agent agree that around 10% of the stock is obsolete, out of date, or otherwise unsellable;
- Around £9,000 of the stock in the shop (at cost) has been supplied by Harold's Hutches;
- Your agent's view is that if he were to remove the stock he would achieve around 10% of cost at auction; and
- Your agent thinks that Sarah's proposal that the stock be discounted by 25% of retail price over the next 3 weeks and then by 50% of retail price in a true closing down sale in the following 3 weeks has merit. His best estimate is that 60% of the saleable stock would sell in the first 3 weeks and the balance in the second 3 weeks.

While you were at the Pet Emporium Mr Barnes of Harold's Hutches called you, very concerned that he is owed £24,000. He demanded immediate access to the shop to collect his hutches under a Retention of Title clause. You are advised that it would be preferable to avoid the overnight removal of the hutches and, assuming that the ROT clause is valid, you estimate that Mr Barnes would need to be paid in the next 10 days.

Orders totalling £4,800 have been placed for rabbits (as Christmas presents) which are due to be collected in the week before Christmas. Customers pay a 25% deposit when the order is placed. £1,250 is due to the rabbit breeder payable when he delivers the rabbits in the week before customers are due to collect.

The basement and back yard area of the shop is about to be let to a Christmas tree supplier under an informal agreement which has been in place for a number of years. The supplier pays cash of £200 per week to store and display his Christmas trees. If one of his customers' needs to pay by credit or debit card then the payment is taken using the Pet Emporium's card machine.

There is currently £425 in the shop's tills and safe. There is an overdraft due to Bishops' Bank of £17,000.

Fresh vegetables and hay are purchased from cash in the till. On average this costs £50 per week.

At this time of year, the Pet Emporium employs 4 members of staff and a store manager. The manager is paid an annual gross salary of £22,000 and the staff who work 40 hours per week on average receive £9 gross per hour. Around 22% of gross pay is paid to HMRC under PAYE/NIC. Employers' National Insurance Contributions are 10%. The weekly paid staff are paid a week in arrears and are due to be paid tomorrow. The store manager will be due to be paid for November on 28 November. Sarah estimates that the employees are due on average 1 week of holiday pay each. The notice period for the weekly paid employees is 1 week, with the shop manager being entitled to 1 month's notice. Due to the length of service potential redundancy pay is £15,000.

Due to an oversight, no payments have been made to the occupational pension scheme for some time and it is currently due £2,500.

The monthly business rates payment is £2,000 and is due on the 1<sup>st</sup> day of the month. Other utilities, including heat, light, insurance, phone/internet and water charges are about £900 per month again due on the 1<sup>st</sup> day of the calendar month.

The Pet Emporium has a small van which is used for animal deliveries and which your agent estimates would realise £2,750. He estimates that other fittings within the shop will have a negligible value and after the costs of removal and sale these would realise only £2,000.

The Pet Emporium owes other trade suppliers £37,839 and HMRC the sum of £14,786 in unpaid PAYE and NIC.

You estimate that your own time costs and disbursements incurred whilst in office as Trustee, including the supervision of the trading period, will be £20,000.

Sarah is concerned about her own position and that of her sister. She advises that Fiona has no assets and currently no earning potential, although she has a potential personal injury claim following her accident which Sarah estimates could realise the sum of £80,000. Fiona has credit card and other debts totalling £7,500.

Sarah herself owns a property jointly with her husband and the equity in the property is estimated to be c£100,000. She also has c£4,000 in ISAs. She estimates that after meeting her share of the household costs she has a monthly surplus income of £1,250.

Sarah has no personal debt other than a student loan of £17,400.

## Requirements

- (a) Assuming that you are going to allow the business to continue trading until it closes permanently on Christmas Eve, prepare a projected weekly cash flow forecast for the six week period beginning today. Show the final balance of funds in hand after trading ceases. State any assumptions that you make. **(14 marks)**
- (b) Outline the key trading related issues that would need to be addressed if the Pet Emporium is to trade. **(6 marks)**
- (c) Assuming that the business trades for the six week period, prepare an Estimated Outcome Statement which shows the likely return to the unsecured creditors from the business. State any assumptions that you make. **(14 marks)**
- (d) Comment on the options available to Sarah and Fiona to address their personal positions and your recommendation for what they should each do. **(6 marks)**

**Total: 40 marks**

**Ignore VAT**