

11 November 2020

PERSONAL INSOLVENCY (3.5 hours)

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 are an Authorised Insolvency Practitioner.

A family friend, Mrs Enys, came to see you this morning following the sudden death of her husband 3 months ago.

Mrs Enys and her husband had been married for 40 years. Her husband took care of all of their finances. It was only following his death that Mrs Enys became aware that her husband had run up significant debts.

Mrs Enys has found out that the house in which she has lived since getting married is registered in Mr Enys's sole name and is subject to a charge in favour of Dark Bank. Mrs Enys had understood that the property was held in their joint names and owned outright: she was sure that a substantial inheritance received by her had been used to pay off the mortgage around 10 years ago. Mrs Enys advised you that the house next door to hers which is similar in all respects to her own house recently sold for £180,000. Mrs Enys does not know how much is owed to Dark Bank as it will not disclose any information to her as she is not the account holder.

Other than the house, Mr Enys's only other assets comprised a 15-year-old car which has now been scrapped, his wedding ring and £200 in premium bonds. Mr Enys did not leave a will.

Mr Enys's creditors comprise council tax arrears of £1,800, 3 credit cards with a total of £22,000 outstanding, an unsecured loan of £7,500, and £1,900 which is owed to a payday lender.

Mrs Enys had assumed that, following her husband's death, his creditors could not pursue the sums that were due to them and that her husband's interest in the property would pass to her. However, when she called the credit card companies to notify them of her husband's death, she was advised that the outstanding amounts were not automatically written off following an account holder's death.

Mrs Enys is uncertain what she should do and has come to you for advice. Mrs Enys is retired and has 2 grown up children who no longer live at home. Mrs Enys used all of her savings to pay for her husband's funeral and is reliant upon the state pension to meet her day to day living costs.

At the conclusion of your meeting you agreed to write to Mrs Enys setting out your preliminary advice and recommended next steps.

Requirements:

Write a letter of advice to Mrs Enys. The letter should set out:

- (a) the options that are available to Mr Enys's creditors to pursue the amounts that are due to them and the potential implications for Mrs Enys if her late husband's debts are not discharged. (8 marks)**
- (b) your advice on the next steps which you recommend should, in all the circumstances, be taken by Mrs Enys. (12 marks)**

Total: 20 marks

Question 2

You are an Authorised Insolvency Practitioner.

Earlier today you met Mr Hanson, who explained that he is a self-employed forester. His business had been successful over a period of many years, as he had a long-standing contract with Forestry England. However, he was unsuccessful at retender during a public procurement tender exercise and lost this stream of work. He has now replaced the contract with short term contracts with local landowners and some ad-hoc work with Forestry England.

Mr Hanson admits that during the period immediately following the loss of the long-standing contract, until alternative work was secured, he did not pay HMRC on time and was slow to adjust his own level of personal spending. He has recently been served with a statutory demand by HMRC in respect of outstanding personal tax of £81,532.

Mr Hanson feels confident that, given time, he can repay this debt now that he has secured alternative work.

Mr Hanson's new 8 month contract with Forestry England ends on 31 May 2021. He has been contracted to fell 1,000 tonnes of timber per month. He receives £37.50 net per tonne of timber felled and transported to the roadside for collection. Forestry England measures the total timber harvested at the end of the month and transfers payment within 14 days.

He has a rolling month to month contract with Sir Hamish Warleggan to provide forestry management services across his estate which is currently providing net income of £15,000 per month. He anticipates that this will continue: however, Sir Hamish has advised that all foresting activity across the estate will shut down in December and January due to the likely weather conditions. Sir Hamish's estates pay within 6 weeks of receipt of a month end invoice.

Mr Hanson's business is operated by him and two employees. The employees are paid annual salaries of £40,000 and £36,000 respectively. The major cost of the business is the equipment required to harvest the timber. Mr Hanson has 5 pieces of machinery with finance agreements in place as follows:

	Valuation	Cost Financed	Annual Percentage Rate (APR)	Term of agreement	Number of payments outstanding
	£	£	%	Months	
Harvester I	350,000	400,000	15	72	50
Harvester II	140,000	200,000	15	48	25
Forwarder I	130,000	180,000	12	60	45
Forwarder II	120,000	150,000	14	50	4
Pick up	4,000	20,000	10	36	0

Mr Hanson also has a personal contract purchase agreement for a Maserati car with a monthly payment of £922. A balloon payment of £22,400 will be required in October 2021 at the end of the agreement term.

On a monthly basis, Mr Hanson pays:

- insurance - £475;
- vehicle expenses (including fuel) - £240; and
- sundry other expenses - £120.

Although he has historically drawn much larger sums from his business Mr Hanson estimates that, in the short term, he can reduce his share of his household (excluding mortgage) and cost of living expenses to £1,250 per month.

Mr Hanson owns his home jointly with his wife. It is valued at £475,000 with an outstanding mortgage of £380,000 and a business loan of £60,000 both due to Levant Bank secured against it. The monthly mortgage payment is £3,200 and the business loan repayment is £1,500 per month. Mr Hanson is 4 months in arrears on his business loan repayments. Mr Hanson's only other debt is a personal credit card from Merceron plc with £14,500 outstanding.

Contracted services for the provision of timber are standard rated for VAT purposes and Mr Hanson is VAT registered. His next VAT quarter end is 31 December 2020.

Requirements:

- (a) Prepare a monthly cash flow forecast for the 6 month period from 1 December 2020 to 31 May 2021 which illustrates the surplus cash which Mr Hanson will generate in this period. Clearly state any assumptions you make. (12 marks)**
- (b) Set out your advice to Mr Hanson on the steps he should take to deal with his financial situation. (8 marks)**

Total: 20 marks

Assume the standard rate of VAT is 20%

Question 3

A partner in your firm has recently been appointed as Trustee in Bankruptcy of Mr. David Despard by the Secretary of State. You have been asked to manage the case.

The handover papers received from the Official Receiver contain a copy of the bankruptcy questionnaire in which Mr. Despard indicates that he is getting divorced from his wife of 15 years and that the divorce proceedings are 'on-going'. No further information has been provided in connection with the divorce. The bankruptcy questionnaire confirms that amongst Mr. Despard's assets is a residential property which is registered at HM Land Registry in joint names with his wife.

Requirements:

Prepare a memorandum to the Trustee. Explain:

- (a) the steps that should be taken by the Trustee in relation to the divorce proceedings. (8 marks)**
- (b) how the divorce proceedings could impact upon the actions of the Trustee and her ability to realise assets for the benefit of creditors. (7 marks)**

Your subsequent investigations reveal that a financial order was made in the divorce proceedings shortly prior to the bankruptcy petition being presented against Mr Despard. However, a number of creditors have contacted you to advise that Mr Despard and his wife are still a couple and that they do not think that the divorce was genuine.

- (c) In light of this information prepare a supplemental memorandum to the Trustee:**
 - (i) setting out the further enquiries that should be made; and**
 - (ii) explaining whether or not the Trustee can challenge the financial order. (5 marks)**

Total: 20 marks

Question 4

You are an Authorised Insolvency Practitioner.

About four months ago, you were contacted by John Paynter, a Doctor, for advice. Following an acrimonious divorce, Dr Paynter resigned his post at a local surgery in 2018 and spent 2 years carrying out voluntary work and travelling overseas. Dr Paynter built up debt whilst at university and these and other debts increased whilst he was travelling. Following his return to the country in July 2020, Dr Paynter came to you for advice on how to deal with his financial affairs.

When you first met him, Dr Paynter had just started a 2-year contract working as a Registrar at the local hospital earning £55,000 per year.

Dr Paynter's only asset of any value is a freehold residential property which is worth £150,000. The property is rented out for £750 a month. The property is subject to a charge in favour of Cornish Bank. The monthly mortgage payment is £695. There is estimated equity in the property of around £10,000.

Following discussions Dr Paynter decided that proposing an IVA would be the most appropriate course of action. You have reviewed Dr Paynter's income and expenditure. You have calculated that he could make contributions from his income of around £1,500 a month. It is proposed that the IVA will last for 5 years. Given the limited equity in the property, Dr Paynter proposes excluding the property from the IVA.

Dr Paynter has 9 creditors, the largest of which is the Student Loans Company which is owed £27,400. Dr Paynter owes his mother £26,400, has a loan with Bodmin Bank pursuant to which £7,800 is outstanding, 2 credit cards with total outstanding balances of £12,200 and an overdraft of £6,425.

Prior to travelling he terminated his car finance agreement early and had been advised that he owes the finance company £3,980 in respect of termination charges. Dr Paynter has also received a claim from an American car rental company which says that he owes US \$13,121 in respect of damage caused to a hire car which was involved in an accident. Dr Paynter does not accept that he owes anything to the car rental company as he had insurance in place to cover any damage. Dr Paynter also owes £520 in respect of various penalty charge notices he has just received for traffic offences following his return to this country.

Dr Paynter has asked you to assist in the preparation of the proposal and to act as Nominee.

Requirements

- (a) Set out the ethical issues you should consider and the steps you should take prior to accepting the appointment as Nominee. (6 marks)**
- (b) Prepare an estimated outcome statement which contrasts the estimated outcome for creditors if Dr Paynter were to be made bankrupt against the estimated outcome from the proposed IVA. Clearly state any assumptions that you have made. (12 marks)**

The IVA proposal was finalised and Dr Paynter's creditors were given 14 days' notice of the decision date of 4 November 2020. You decided that holding a virtual meeting would be the most appropriate decision procedure. The following votes were received:

Creditor	Claim per statement of affairs	Vote	Received	Accompanying proof of debt
Bodmin Bank	£7,800	Accept	By fax at 8.30pm on 4 November 2020	Yes
Sarah Paynter	£26,400	Accept	By post on 4 November 2020	Yes
XYZ (credit card)	£7,200	Reject	By post on 2 November 2020	Yes
ABC (credit card)	£5,000	Accept	By post on 5 November 2020	Yes
Easy Drive Car Rental	US \$13,121	Reject	By email on 4 November 2020	No
Cornish Bank (overdraft)	£6,425	Accept	By post on 3 November 2020	Yes
X Finance (terminated car lease)	£8,980	Accept	By email on 4 November 2020	Yes
Transport for London (Penalty charge notices)	£520	Reject	By post on 1 November 2020	No

Requirements

- (c) Set out, giving your reasons, which votes should be admitted for voting purposes and which should be rejected. (9 marks)
- (d) Explain whether or not the IVA was approved on the decision date. (2 marks).

Assume that the IVA was approved. Shortly following implementation, Dr Paynter advises you that he may wish to undertake further voluntary work overseas once his 2-year contract at the local hospital comes to an end. He is unsure what impact this would have on his IVA.

Requirements

- (e) Set out the various options available to Dr Paynter and the potential consequences of each option. (11 marks)

Total: 40 marks

Assumption: \$1 = £0.76