

JOINT INSOLVENCY EXAMINATION BOARD

Joint Insolvency Examination (Scotland)

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Insolvency
Examination
Board*

10 November 2021

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

References to legislation are to that which was in force on 30 April 2021. References to 'the Act' are to the Bankruptcy (Scotland) Act 2016. References to Sections, Schedules and Rules of other legislation will mention that other legislation.

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 **right arrow** in the header to begin the exam. The exam timer will begin to count down.
4. When the exam timer reaches zero, the exam will end. To end the exam earlier, navigate to the last question and click the right arrow button. Click the **Submit** button to close the exam.
5. You may use a pen and paper for draft workings. Any information you write on paper will not be read or marked.
6. You must make sure your answers and workings are clearly visible in the word processing area when you submit your exam. Only your answer in the word

processing area will be marked. **You must copy over any data from the spreadsheet area to the word processing area for marking.** The examiner will not be able to expand rows or columns where content is **not** visible.

7. The examiner will take account of the way in which answers are structured. Respond directly to the exam question requirements. Do not include any content or opinion of a personal nature, this includes your name or any other identifying content. A student survey is provided post-exam for feedback purposes.

Question 1

You were appointed as the Trustee in the Sequestration of John Salinas (“Mr Salinas”) on 29 October 2021.

From papers provided by the petitioning creditor’s legal agent you establish that the only assets which have been identified as being owned by Mr Salinas are five properties which he rents out. Three of the properties are registered in Mr Salinas’s sole name. The other two properties are registered in the joint names of Mr Salinas and his son.

Requirements

- (a) **What information should you ask Mr Salinas to provide in relation to his properties?** (7 marks)
- (b) **Once you have obtained the information you require, what are the next steps that you should take in relation to the properties and to any rental income that is generated by them?** (10 marks)
- (c) **What risks are associated with being appointed as the Trustee of an individual who owns a number of solely owned tenanted properties, and how can these risks be mitigated?** (3 marks)

Total: (20 marks)

Question 2

You are an Authorised Insolvency Practitioner.

At the request of your firm's tax partner, you have just had a meeting with an existing client of hers, David Hamilton ("Mr Hamilton"). Mr Hamilton trades as Hamilton Steel.

Mr Hamilton advised you that he is owed a significant sum of money in respect of steel supplied to Adam Solon ("Mr Solon"). Mr Solon owed money to a number of local businesses and ultimately made an application to the Accountant in Bankruptcy for his bankruptcy. The award of sequestration was made on 9 August 2018 and a Trustee ("the Trustee") was appointed.

Mr Hamilton was aware that Mr Solon had a number of assets including a house, a boat and interests in a variety of businesses. Mr Hamilton understood that the realisation of assets could take some time, but was confident that he would receive a dividend in respect of the money that was owed to him. Although Mr Hamilton received annual reports from the Trustee, the reports were quite long and he had not read them in any detail.

Last week Mr Hamilton was chatting to a business contact who also is owed money by Mr Solon. During the conversation the business contact told Mr Hamilton that there would be no return to creditors as all of the realisations had gone to pay the Trustee's fees. Mr Hamilton was surprised by this and decided to review in detail the reports that he had received from the Trustee. It transpired that the Trustee's time costs were in excess of £80,000 with a further £40,000 incurred in relation to legal fees. Total realisations to date were £115,000. No further realisations were anticipated and no dividend would therefore be paid to the unsecured creditors.

Mr Hamilton cannot understand how the fees for realising the assets could be so high and is angry that he will not receive any return through the bankruptcy. Mr Hamilton has asked you to advise him.

Requirements

Prepare an email to Mr Hamilton which:

- (a) explains the process that a Trustee in a sequestration should follow to secure approval of fees and outlays; (7 marks)
- (b) sets out the additional information and documentation that you need Mr Hamilton to provide in order that you can advise him on his options; (6 marks)
- (c) explains the options available to creditors of a sequestrated estate who want to challenge the remuneration of a Trustee and the key points to be considered by a creditor before making such a challenge. (7 marks)

Total: (20 marks)

Question 3

You are an Authorised Insolvency Practitioner.

Last week your manager took a telephone call from Adam Quinn ("Mr Quinn"). You have reviewed the notes of what appears to have been a relatively short call.

Mr Quinn said that he wants to enter a Trust Deed. Mr Quinn advised that he is a self-employed painter and decorator, trading as Quinn Decor and charging £125 a day. Mr Quinn was evasive when asked for his current residential address and said that it was best to contact him on his mobile phone or by email. If anything did need to be sent to him in the post, it could be sent care of his mother's address, which is also the trading address for Quinn Decor.

Mr Quinn was asked about his outgoings. Mr Quinn explained that he is not very good with money. His clients pay him in cash which he spends on general living expenses. He does not have any savings but thought that, if he were to be a bit more organised, he could set some money aside and make monthly contributions of around £200 towards a Trust Deed.

Mr Quinn advised that his liabilities include £20,000 of credit card debt, £12,000 outstanding on a PCP agreement and £10,000 owed to his former wife. Mr Quinn said that he wants a Trust Deed to be progressed as quickly as possible.

Following your review of the notes of the telephone call, you decided that it would be advisable to arrange a meeting with Mr Quinn in order that you could discuss matters in more detail.

Requirements

- (a) **In advance of the proposed meeting, prepare a note which sets out all of the additional information and documentation that you will need Mr Quinn to provide in order for you to be able to consider whether a Trust Deed would be appropriate.**

(12 marks)

- (b) **If Mr Quinn fails to provide you with all requested information and documentation in connection with his affairs, how would this impact upon your decision as to whether or not to act as Trustee?**

(3 marks)

The meeting subsequently took place. Mr Quinn seemed co-operative and provided additional information in connection with his affairs. However, after the meeting one of your administrators came to see you and told you that she had recognised Mr Quinn as she had been the case administrator who dealt with his sequestration when she was working at another firm. She told you that Mr Quinn had attended a number of meetings with his Trustee at which she had been present in order to take notes. A quick check of the Register of Insolvencies confirmed that Mr Quinn had been made bankrupt on 10 June 2018.

Requirement

- (c) **What additional enquiries should now be made to determine whether a Trust Deed could still be appropriate and how would you advise Mr Quinn to proceed?**

(5 marks)

Total: (20 marks)

Question 4

You are a manager in the office of Susan Eden (“Ms Eden”) who is an Authorised Insolvency Practitioner.

On 25 October 2021, Ms Eden was appointed Trustee in the sequestration of Lee Charles (“Mr Charles”) following a petition by HMRC and a warrant to cite dated 7 September 2021.

Mr Charles has been fully cooperative with you. He previously had a successful unincorporated business called Lee’s Yacht Chandlers (“the Chandlery”), providing supplies and other services to boats in the Marina at Cyrus Bay, Scotland. However, demand for the Chandlery’s services declined during the global pandemic. In desperation and after suffering a breakdown, in September 2020 he set fire to the Chandlery’s premises, seemingly with no plan other than to bring his business worries to an end. The fire completely destroyed the premises and contents and also damaged two large yachts in the Marina. Subsequently, Mr Charles pleaded guilty to a charge of arson. He avoided a custodial sentence but was ordered to carry out 225 hours of unpaid work in the community within a 12 month period. The Chandlery has not traded since the fire.

Mr Charles and his wife jointly own a Victorian villa overlooking the Marina. Following the fire Mr Charles separated from his wife and he has lived in a static caravan he owns at the King Caravan Park which is 5 miles along the coast. The caravan was purchased by Mr Charles for £25,000 in 2019. The annual ground rental is currently £1,500.

Mr Charles’s estranged wife and their 9 year old twin sons continue to live in the villa. The villa was purchased by the couple in 2010 for £312,000. Mrs Charles contributed the £50,000 deposit: Mr Charles has advised you that he and his wife have an agreement that she would be repaid this sum from the proceeds if the villa were to be sold. Mrs Charles has solely maintained the mortgage payments of £1,800 per month since the couple separated. Mr Charles estimates that there is around £75,000 outstanding on the mortgage.

Mr Charles owns a Westerley 33 sailing yacht which is currently in a dry dock in the Marina following repairs. He has advised you that he is really keen to keep the yacht. He has already spoken to his parents about this, and they are prepared to offer Ms Eden £15,000 for her interest.

Mr Charles owns a 33% shareholding in Lovely Yachts Limited. This company is registered at the Marina and its business is acting as a broker for the sale of new yachts. The most recent accounts prepared to 31 December 2020 show Shareholders’ Funds of £85,000.

Mr Charles drives a second hand Volkswagen Golf estimated to be worth £2,500.

Requirement

- (a) **Set out the steps you would take to protect and realise the assets identified from the information provided by Mr Charles.**

(10 marks)

Last week Mr Charles attended a meeting with you and Ms Eden. Mr Charles advised that he has almost completed his community service and that from 1 January 2022 he has accepted a role as a Bosun on a Superyacht owned by a Russian Oligarch. He expects to earn €3,250 for each month that he works on the yacht. Due to his recent criminal conviction, he will be in this more junior role initially but would expect to be promoted to First Mate, earning around €4,200 per month, after around 1 year. His new employment will

require him to work away from his sons for 9 months of the year, but Mr Charles said that he is prepared to do this as he believes that, with minimal expenses, he would be able to meet his estranged wife's request for maintenance for their sons of £750 per month. Mr Charles was surprised when you advised him that he would be expected to contribute his surplus income to the bankruptcy estate.

Following the meeting, Ms Eden asked you to estimate what should be recoverable by way of a Debtor Contribution Order.

Requirement

- (b) Draft an email to Ms Eden. Estimate the amount of the monthly Debtor Contribution Order you should seek from Mr Charles. Your email should include your detailed workings, explain any estimates or assumptions that you make and outline any issues that you foresee.**
- (8 marks)**

Note:

Assume an exchange rate of £1: €1.16

A number of claims from creditors have been received.

HMRC have submitted a claim as follows:

Self-assessment taxation	£6,500 for Mr Charles
VAT	£36,800 due by the Chandlery for the quarter ended 31 July 2020
PAYE/NIC	£3,250 relating to the Chandlery. Of this sum, £1,250 represents deductions from wages paid to the Chandlery's employees through the Job Retention Scheme ("JRS")
Employer's NI contributions	£2,200 relating to the Chandlery
Overpayment	£600 overpayment to the Chandlery through the JRS

The Chandlery had two employees who were on furlough during the period from April to June 2020. Mr Charles re-opened the Chandlery around 1 July 2020 and resumed paying wages without accessing the JRS, but he made both employees redundant on 30 September 2020, immediately following the fire. He has advised you that the employees were paid their accrued wages up to the date of redundancy but were owed pay in lieu of notice of £425 each and holiday pay of £625 and £725 respectively. The employees did not have any entitlements to redundancy pay as they had not worked for the Chandlery for more than 1 year.

The owner of the Marina, Cyrus Bay Marina Limited ("CBML"), has submitted a claim as follows:

Unpaid rent	£7,500 being rent due for the Chandlery premises from 24 June 2020 to 24 December 2021 (6 quarters at £1,250 per quarter)
Unpaid mooring charges	£4,662 for the Westerley 33, accrued over the same period as the rent at £777 per quarter
Repairs	£1,332 for the Westerley 33
Future rent	£10,000 for the Chandlery premises. The lease is due to expire in December 2023
Dilapidations	£50,000 relating to the Chandlery premises

CBML has advised you that it is claiming a lien over the Westerley 33 and will not be releasing the yacht unless all sums due to them are paid.

Exclusive Yacht Supplies Limited have submitted a claim for £23,200 in respect of goods supplied to the Chandlery during 2019 and 2020. They have told you that, following the fire, they visited the premises but were unable to identify any stock they could recover under retention of title. On 26 July 2021 they obtained decree against Mr Charles and an inhibition was subsequently obtained over Mr Charles's interest in the villa.

You have received an email from the firm of solicitors acting on behalf of Pinnacle Insurance who provide insurance to CBML. They have intimated that they will have a claim of £125,000 which comprises rebuilding costs for the Chandlery premises of £45,000, with the balance being payments made to the two owners of the damaged yachts together with legal costs.

Mr Charles has advised that in April 2020 he made an application for and received a Bounce Back Loan from Steinbeck Bank in the sum of £12,500. The loan remains outstanding in full.

You have received four other unsecured claims totalling £12,600.

Ms Eden is due to meet her contact at HMRC to discuss various cases. She has asked that you provide her with an estimate of the dividend which HMRC may receive from Mr Charles's bankruptcy. In order that an estimate of the dividend can be provided to HMRC, you undertake a review of the creditor claims that have been received to date and check your firm's time recording system and see that work in progress on a time costs basis is currently £4,250.

Requirements

- (c) **For each of the creditor claims, set out any additional information or documentation that the creditor should be required to provide in support of their claim. Clearly stating any assumptions that you have made, explain which creditor claims you would advise should be admitted and in what amount.**
- (10 marks)**

- (d) **Showing your workings and clearly stating any assumptions you make, prepare an Estimated Outcome Statement which Ms Eden can provide to her contact at HMRC.**

(12 marks)

Total: (40 marks)