

Joint Insolvency Examination 2022

16 NOVEMBER 2022

3.5 HOURS

PERSONAL INSOLVENCY

**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 2022. 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 (England and Wales) Rules 2016.

References to Sections and Rules of other Acts, Regulations and Orders will mention the Act, Regulation or Order

Important Information:

1. Click on the **right arrow** in the header to begin the exam. The exam timer will begin to count down.
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. A warning is given five minutes before the exam ends. 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.
4. Click on the **right arrow** in the header to begin the exam. The exam timer will begin to count down.
5. 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.
6. You may use a pen and paper for draft workings. Any information you write on paper will not be read or marked.
7. 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.

8. The examiner will take account of the way in which your 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.

Question 1

You are an Authorised Insolvency Practitioner.

On the morning of 15 November 2022 you were appointed as the Trustee in Bankruptcy of Ian Hunter ("Mr Hunter"), the Official Receiver having sought an urgent Secretary of State appointment due to Mr Hunter being a sole trader. The bankruptcy order had been made on 14 November 2022 on a petition presented to the court on 26 September 2022.

Immediately upon your appointment you attended Mr Hunter's trading premises, a small general store which also has a single petrol pump at the front. You established that the business was still trading although Mr Hunter was not at the business premises. A member of staff was working at the store. He said that he had not seen Mr Hunter for quite a while and understood that he might be in Spain as he often spent long periods of time there.

Once you had explained the reason for your visit, the employee allowed you access to the office in which you found piles of papers. From your brief review of the papers you have ascertained that the premises are leased. You could not find a copy of the lease but have seen correspondence from the landlord in which forfeiture of the lease was threatened due to the arrears of rent that have accrued.

You found copy bank statements in respect of an account held in Mr Hunter's sole name. The statements showed that a number of significant cheque payments have been made from the account in recent months.

The employee then complained to you that he had just received another telephone call from an angry supplier who had been demanding payment of money that was due to him. He said that quite a few calls had been received and one supplier had turned up at the store that morning. He had threatened to take all of his stock away. To prevent him from doing so, the staff member made payment to him from money that was held in the till. He did not know what he should do if further creditors turned up at the store.

Whilst walking around the outside of the store, you noticed a locked door at the rear of the property. The employee told you that the door provided access to a small self-contained flat. He said that he had seen different people entering the flat over the last few months but did not know if it was currently occupied.

By the time you had completed your inspection of the premises it was approaching closing time. The store was closed and secured. You returned to the office to review some of the documentation obtained from the office and to decide on how to proceed.

Requirements

- (a) **Having regard to the specific circumstances of this case, identify the legal and other issues you would need to consider prior to deciding whether to continue trading the general store.**

(4 marks)

- (b) **Assuming that trading continues, what actions would you need to take in the first seven days of your appointment as Mr Hunter's Trustee in Bankruptcy?**

(16 marks)

Total : 20 marks

Question 2

You are a manager at an Insolvency Practitioner's firm.

Your colleague, Kate Lavery has recently been appointed as Trustee in Bankruptcy of Ted Arnott ("Mr Arnott"). The bankruptcy order was made on 28 October 2022 on a creditor's petition presented to the court on 7 September 2022.

Mr Arnott's only known asset is a solely owned property at 1 Crown Terrace. A drive by valuation of the property has taken place which indicates that the property is estimated to be worth £500,000. The Trustee has asked you to download office copies of the title to the property to check that the bankruptcy order is noted against the title. You have also been asked to check whether there are any other entries registered against the title which may impact upon the Trustee's interest in the property and her ability to realise this.

You have downloaded office copies from the Land Registry portal. These confirm that the property is solely owned by Mr Arnott, that no mortgages or legal charges are registered against the title and that notice of the bankruptcy order has been entered against the title. However, the following entries also appear in the proprietorship and charges registers.

(05.09.2022) Notice of home rights under the Family Law Act 1996 in favour of Lindsay Arnott of 1 Crown Terrace the spouse or civil partner of Ted Arnott.

(08.09.2022) RESTRICTION; No disposition of the registered estate, other than a disposition by any proprietor of any registered charge registered before the entry of this restriction is to be registered without a certificate signed by the applicant for registration or their conveyancer that written notice of the disposition was given to Cottan Credit Ltd c/o LOD Solicitors, 1 Main Street, Costly, being the person with the benefit of an interim charging order on the beneficial interest of Ted Arnott made by the County Court Money Claims Centre on 17 August 2022 (Court reference A1ZBC345).

(09.09.2022) Pursuant to an application made on 5 September 2022 to the High Court of Justice for a freezing order to be made under the Senior Courts Act 1981, no disposition by the proprietor of the registered estate is to be registered except with the consent of Mr D Waldron of Waldron & Co Solicitors, City Plaza, Central or under a further order of the Court.

(12.09.2022) Under a restraint order made under the Proceeds of Crime Act 2002 on 6 September 2022 (Court reference AB12344X) no disposition by the proprietor of the registered estate is to be registered except with the consent of The Chief Prosecutor of the Central Constabulary of 123 Letsby Avenue, Central, AB1 2DE or under a further order of the Court.

Requirement

- (a) **Prepare a briefing note for the Trustee. Explain, for each of the four entries set out above, the potential impact that the entry may have on the Trustee's interest in the property and her ability to realise this. The note should set out what further enquiries should be made by the Trustee in respect of each entry.**

(15 marks)

Kate Lavery has recently been appointed as Trustee in Bankruptcy of another individual, Mr John Lomax ("Mr Lomax"). You have reviewed copy bank statements for a number of accounts held in Mr Lomax's sole name. Despite Mr Lomax not having worked for a number of years and having no known assets other than a modest property, his bank statements show significant sums being paid into and out of his bank accounts over a number of years. Many deposits into his accounts were made in cash, with payments from the accounts appearing to have been made to bank accounts outside of the jurisdiction.

Requirement

- (b) What action should the Trustee in Bankruptcy take following your review of the bank statements?

(5 marks)

Total: 20 marks

Question 3

You are an Authorised Insolvency Practitioner.

On 8 November 2022 you met Mr Ryan Hastings (“Mr Hastings”). During the meeting Mr Hastings became very distressed. He explained that he had been struggling to cope following the breakdown of a long term relationship and because of other significant personal issues which caused him to lose his job. This ultimately led to him having a breakdown. After spending many weeks in hospital he had been discharged but he remains under the care of the local mental health crisis team. Mr Hastings lives alone in a flat which he rents from a social housing provider.

Mr Hastings told you that, following his discharge from hospital, he had received a visit from an enforcement agent who stated that he had been instructed to execute a warrant in respect of an unpaid judgment debt. Mr Hastings did not know what to do but, prior to the enforcement agent entering his property, his neighbour intervened to explain that Mr Hastings had only recently been discharged after a long stay in hospital. The enforcement agent agreed to leave but said he would return in seven days. The neighbour had impressed upon Mr Hastings the need to get proper advice in relation to his financial position.

Mr Hastings brought some of his recent post to the meeting from which you have established that his gas, electricity and water accounts are in arrears. It also appears that he owes money to a number of credit card companies. Mr Hastings explained that as he is currently reliant upon universal credit there is no immediate prospect of his being able to repay his debts. However, he is starting to feel more positive about the future and is hoping that at the end of his current treatment plan, he will be able to start working once again.

At the conclusion of the meeting you confirmed that you would send an email to Mr Hastings setting out his options and recommending a course of action.

Requirement

- (a) Prepare the email to be sent to Mr Hastings. Set out the options that are available to Mr Hastings and your recommendation for the most appropriate course of action for him. For each of the options that you identify, you should explain briefly the criteria to be met before that option can be accessed and set out any practical considerations for Mr Hastings given his particular circumstances.**

(15 marks)

You sent the email to Mr Hastings but did not receive a response. You decided to call Mr Hastings to check whether any further advice or assistance is required. Mr Hastings apologised for not responding but explained that, following receipt of your email, he had started to open the pile of post which he had received over the last couple of months but which he had not previously been able to face. He told you that one envelope enclosed a bankruptcy order and others contained correspondence from the Official Receiver. It transpires that Mr Hastings had been made bankrupt on a creditor’s bankruptcy petition on 1 November 2022.

Requirement

- (b) In the light of this new information, what would you advise Mr Hastings to do?**

(5 marks)

Total: 20 marks

Question 4

You are an Authorised Insolvency Practitioner.

A contact in a local accounting firm asked you to meet his client Roz Huntly (“Ms Huntly”) in early November 2022. Ms Huntly is one of two partners in Lakewell Taylor legal services who have an office on the Main Square in Collersdale. Lakewell Taylor is a partnership as defined in the Partnership Act 1890 and is regulated by the Solicitors Regulation Authority. Unfortunately, the other partner, Tim Ifield, had been in a road accident the week before and has suffered life changing injuries which mean that he is unlikely to return to work for some considerable time.

Ms Huntly has had limited involvement in the financial affairs of Lakewell Taylor. However, she had immediately sought advice from her accountant following receipt of a statutory demand from HMRC in the sum of £43,239 for unpaid PAYE/NIC.

Ms Huntly’s accountant has provided management accounts for Lakewell Taylor for the 10 months to 31 October 2022.

Lakewell Taylor

Profit and Loss account

10 months to 31 October 2022

	£	£
Turnover		
Conveyancing	258,000	
Executry	75,000	
Other	<u>30,000</u>	<u>363,000</u>
Expenses		
Salaries	111,362	
Employer's Pension	3,131	
PI Insurance	14,520	M
Rent	8,333	
Rates	4,375	
Utilities/Water	4,500	M
Phone/Internet	2,500	M
Software licensing	7,500	M
Stationery	350	M
Professional Fees	1,971	
Depreciation	2,083	

Accounting and payroll		<u>5,000</u>	M
			<u>165,625</u>
Profit			<u>197,375</u>
Split			
T Ifield	60%		118,425
R Huntly	40%		<u>78,950</u>
			<u>197,375</u>

Lakewell Taylor

Balance Sheet as at 31 October 2022

	£	£	£	£
Fixed Assets	Opening	Depreciation	Closing	
Computer Equipment	7,500	1,562	5,938	
Furniture & Fittings	<u>2,500</u>	<u>521</u>	<u>1,979</u>	
	<u>10,000</u>	<u>2,083</u>	<u>7,917</u>	7,917

Current Assets

Trade debtors			3,000	
Prepayment Law Society Fees			<u>394</u>	
				<u>3,394</u>
				11,311

Current Liabilities

Overdraft - Nevis Bank			24,300	
PAYE/NIC			49,862	
Workplace pension			1,878	

Accruals	Rent	8,333	
	Rates	<u>438</u>	<u>84,811</u>
Net liabilities			<u>-73,500</u>

Represented by

Capital Accounts

	Mr Ifield	Ms Huntly	Total	
Brought forward	- 45,000	20,200	- 24,800	
Profit in 10 months to date	118,425	78,950	197,375	
Drawings	<u>- 171,075</u>	<u>- 75,000</u>	<u>-246,075</u>	
Carried forward	<u>- 97,650</u>	<u>24,150</u>	<u>- 73,500</u>	<u>- 73,500</u>

The accountant also provides payroll services and Ms Huntly has been provided with the following payroll information.

	Salary (Gross)	Employer's NIC	Employer Pension 4%	Employee Pension 4%	Employee's NIC	Total Tax
	£	£	£	£	£	£
Salaries						
Newly qualified solicitor	43,500	5,584	1,484	1,484	4,455	7,346
Paralegal	30,000	3,552	944	944	2,666	3,486
Paralegal	25,000	2,800	744	744	2,003	2,486
Cashier/admin	<u>21,000</u>	<u>2,198</u>	<u>584</u>	<u>584</u>	<u>1,473</u>	<u>1,686</u>
Annual cost	<u>119,500</u>	<u>14,134</u>	<u>3,756</u>	<u>3,756</u>	<u>10,597</u>	<u>15,004</u>

Ms Huntly explains that Lakewell Taylor consistently complete around 30 conveyancing transactions each month with, on average, 18 purchases at a fee of £900 and 12 sales at a fee of £800. Ms Huntly highlighted that, in December, the level of completions drops by one third. Fees are paid at completion. Ms Huntly mainly focuses on conveyancing work and oversees around two thirds of these files, while Mr Ifield supervises the balance. Ms Huntly estimates that in the short term, if she increased her working hours from 4 to 5 days per week she could cover the conveyancing work previously done by Mr Ifield.

Mr Ifield acts as the Executor in the administration of deceased estates. These take on average 9 months to complete and the average fee is £7,500. The fee is drawn when the final distribution of the

estate is made. Ms Huntly believes that there are 2 Executries due to complete in December 2022 and 1 in February 2023. She believes that this work could be done by Lakewell Taylor's newly qualified solicitor with some supervision from her.

Mr lfield had generated additional income from wills and inheritance planning. Ms Huntly does not feel that this is an area which she is qualified to pursue. There are outstanding fees in relation to this work and she believes that 80% of these are recoverable during November and that the balance should be written off.

Ms Huntly has annotated the management accounts to mark with an "M" those expenses which are paid by monthly direct debit.

Professional indemnity insurance represents 4% of turnover. Rent is due on the rent quarter dates and rates are paid twice yearly in May and October.

Annual subscriptions to the Law Society and other professional memberships are due to be paid in full in January at a rate of £1,000 per partner and £365 per newly qualified solicitor.

Requirements

- (a) Prepare a monthly cashflow projection for the 5 months from 1 November 2022 to 31 March 2023. Calculate the cash that will be generated by Lakewell Taylor in this period on the basis that ongoing commitments are maintained but no payment is made to historic debt. Clearly state any assumptions you have made.**

(10 marks)

Assumptions: ignore VAT and disbursements paid by Lakewell Taylor.

- (b) Set out the debts currently due by Lakewell Taylor and explain how these could be managed with reference to the cashflow. Advise Ms Huntly of any other information required.**

(9 marks)

- (c) Explain the options available to Ms Huntly to deal with Lakewell Taylor's financial difficulties.**

(11 marks)

Earlier today, Ms Huntly returned to see you. She has been reviewing the Bank Statements for Lakewell Taylor's client account and is concerned about some entries relating to conveyancing transactions. As an example, she shows you the following client account statement in respect of a recently completed property sale.

Lakewell Taylor				
Client a/c				
		Out	In	Bal
		£	£	£
14-Oct-22	Corbetts solicitor Mr S Railston - purchase of 22 Kingsgate		242,387.00	248,382.00
20-Oct-22	ABC Bank - sums due under security	183,597.00		
	Collersdale Estate Agency	3,635.00		
	Lakewell Taylor Fees a/c	800.00		
	#573168 - Ifield	1,000.00		
	Ms J Moffat - sale of 22 Kingsgate	53,355.00		5,995.00

Requirement

- (d) Outline any concerns that you may have and advise on what, if anything, Ms Huntly should do

(5 marks)

You are subsequently appointed as Trustee in Bankruptcy of both Ms Huntly and Mr Ifield.

Requirement

- (e) Giving your reasons, explain your responsibilities for the various books and records held by Lakewell Taylor and how these responsibilities should be discharged.

(5 marks)

Total: 40 marks