

Joint Insolvency Examination 2023

15 NOVEMBER 2023

3.5 HOURS

PERSONAL INSOLVENCY (SCOTLAND)

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 2023. 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.

Important Information

Please read this information carefully before you begin your exam.

Starting the exam

Click on the **right arrow** in the header to begin the exam. The exam timer will begin to count down.

Preparing your answers

Answer all questions.

Respond directly to the exam question requirements. Do not include any content of a personal nature, such as your name.

Only your answer in the word processing area will be marked. You must copy over any data for marking from the spreadsheet area to the word processing area.

Issues during the exam

If you encounter any issues during the exam you should tell the invigilator as they may be able to resolve the issue at the time. The invigilator cannot advise you on how to use the software.

Ending the exam

When the exam timer reaches zero, the exam will end. To end the exam earlier, go to the last question and click the right-hand arrow button, then click the **Submit** button to close the exam.

Question 1

You are an Authorised Insolvency Practitioner.

You have recently been appointed as the Trustee in the sequestration of Mr Tim Chicago. Correspondence you receive from the petitioning creditor confirms that Mr Chicago has a portfolio of seven buy-to-let properties. You have arranged a virtual telephone conference with Mr Chicago, to take place next week, in order to conduct an initial interview and obtain further information in relation to these properties. When Mr Chicago responded to your email and confirmed his availability for the conference call, he also attached some further documentation. From your review of the information provided, you note the following in relation to the buy-to-let properties:

- Sleet Bank has an all sums security registered against three tenement flats all in the same close held in Mr Chicago's sole name. The City Council has issued a statutory repairs notice in relation to roof repairs required in the close;
- Snow Bank has a standard security registered against a fourth property which is in the joint names of Mr Chicago and his daughter. Snow Bank has served notice of possession proceedings; and
- Rain Bank has an all sums security registered over three flats which are in Mr Chicago's sole name. The flats are located within a luxury private development where very high service charges are payable. Mr Chicago has not paid the service charges for a number of years. To preserve the value of its security, Rain Bank has discharged the outstanding arrears of service charges and added the amounts paid to the outstanding loans.

Also, from the attachments to Mr Chicago's email it appears that he purchased £5,000 of cryptocurrency in 2017 and owns a timeshare in Spain and a ski chalet in Bulgaria.

Requirements

- (a) Set out the additional information you require, either from your conference call with Mr Chicago or otherwise. Explain the steps you should now take to deal with the seven buy-to-let properties. Outline the impact that the actions of the City Council and banks may have on your ability to realise your interests in the properties.**

(12 marks)

- (b) What initial action should you take to safeguard and deal with the cryptocurrency?**

(3 marks)

- (c) Summarise the key steps that that you should take to safeguard, deal with and ultimately realise your interests in the timeshare and ski chalet.**

(5 marks)

(Total: 20 marks)

Question 2

You are an Authorised Insolvency Practitioner working within a firm which deals predominantly with personal insolvency cases.

Your firm has recently run an advertising campaign promoting the use of a trust deed which enables individuals to write off at least 75% of their indebtedness. You have just received a brief note of a preliminary call that has taken place between a member of your call centre staff and a Miss Clare Denver. The note says that Miss Denver has incurred around £30,000 of consumer debt with a combination of credit cards and, more recently, “buy now pay later” companies. Miss Denver wants to use a trust deed as soon as possible to write off the majority of her debt.

You have called Miss Denver in order to obtain further information. During this call Miss Denver explained that her problems started around 18 months ago. She has now been diagnosed as bipolar and is receiving treatment. However, prior to her diagnosis she had spent significant sums of money on holidays as well as buying designer clothes, shoes, handbags and make up. Whilst she had tried to engage with her creditors, continuing periods of depression have meant that she has struggled to interact with her creditors and the overall level of her debt is only serving to make her bouts of depression worse.

Miss Denver lives at home with her mother and currently works an average of 14 hours a week as an administrative assistant at the local council. Whilst initially it was possible for her to make the minimum monthly payments to her credit card companies, the monthly instalments now falling due in respect of purchases made through the “buy now pay later” companies mean that she does not have enough money to meet even her minimum repayment obligations. Miss Denver has no assets of any significant value.

Miss Denver stated that she was keen to write off the majority of her debt as promised in the advertisement. She wants to write off her debt as soon as possible as this should reduce her overall liability to a level that she thought that she could manage to pay back. You explained to Miss Denver that whilst a trust deed could be one option for dealing with her current financial situation, it was important that she had a full understanding of all options prior to making an informed decision about how she wishes to proceed. You arranged to meet Miss Denver the following day to discuss matters further and to undertake a full assessment of Miss Denver’s financial and personal circumstances.

Requirements

- (a) List the additional information which will be required for you to carry out your assessment.**

(4 marks)

- (b) Set out the factors to which an Insolvency Practitioner should have regard when carrying out an assessment of whether a trust deed would be an appropriate solution, together with your initial comments in relation to each factor based on the information provided by Miss Denver to date.**

(11 marks)

- (c) Briefly comment on the potential alternative options available to Miss Denver and the appropriateness of each to her situation.**

(5 marks)

(Total: 20 marks)

Question 3

You are an experienced manager specialising in personal insolvency.

You have recently joined a new firm to manage the team responsible for the practice's portfolio of personal insolvency cases. Whilst most of the cases in the portfolio are relatively straightforward, there are 5 cases which are proving difficult to progress. You have just finished a team meeting in which these cases were discussed.

Case 1 is the bankruptcy of Mr Seattle. Mr Seattle was made bankrupt on 10 February 2023 and a partner in your firm was appointed as Trustee on 20 March 2023. Mr Seattle's only known asset is a property which is registered in his sole name. Mr Seattle has not lived at the property for several years, following his separation from his wife. Mr Seattle has advised that whilst his wife uses a wheelchair, she is not as ill as she has maintained in correspondence with the Trustee. Mr Seattle's wife does not work and is refusing to leave the property. Whilst Mr Seattle had been paying the mortgage, he stopped making the payments upon being made bankrupt. Following the Trustee's appointment, a drive by valuation of the property was obtained which valued it at £325,000. The amount outstanding at the time to the secured lender was £265,000. There are no other sums secured against the property.

Case 2 is the bankruptcy of Mrs Washington. Mrs Washington was made bankrupt on 5 July 2023. The major creditor in the bankruptcy sought the appointment of a partner in your firm as Trustee in order that she could conduct a thorough investigation into Mrs Washington's affairs. Since the Trustee's appointment she has written to Mrs Washington on a number of occasions, but all correspondence has gone unanswered.

Case 3 relates to the trust deed of Miss York which became protected on 3 February 2020. The trust deed was to last for 4 years, with contributions of £200 a month made from income. The equity in Miss York's solely owned property had been established at the outset of the trust deed and a Form 1B signed agreeing that the Trustee would abandon her interest in the property when 24 additional monthly contribution payments of £200 each were made. Until August 2023 all monthly contributions from income were made on time but none has been received since. All letters to Miss York in relation to both contributions and equity have not been answered and all recent attempts to contact Miss York have failed.

Case 4 is the bankruptcy of Mr Lauderdale. On 17 March 2023 a partner in your firm was appointed as Trustee in the sequestration of Mr Lauderdale. Mr Lauderdale was made bankrupt following a petition presented to the Court by Sunny Bank ("the Bank") and a subsequent warrant to cite issued by the Court on 6 January 2023. The Bank has confirmed that the petition debt relates to a personal guarantee given by Mr Lauderdale for £1,000,000 plus interest and costs. The personal guarantee was called upon after 4 companies in respect of each of which Mr Lauderdale was the sole director, entered into compulsory liquidation. There remains a shortfall of many millions of pounds to the Bank as the Liquidators have not been able to identify company assets of any significant value that could be realised. Mr Lauderdale states that he has no assets and, since the companies went into liquidation, has had no income. However, you are aware that Mr Lauderdale lives in a large house and drives a new Range Rover. The Bank has also advised you that Mr Lauderdale's two children attend private schools. The Bank has asked that the Trustee confirms the steps that will be taken to investigate Mr Lauderdale's affairs and recover assets for the benefit of creditors.

Case 5 relates to a Mr Houston. Mr Houston was made bankrupt on 28 March 2023 following a warrant to cite issued by the Court on 6 February 2023. Although Mr Houston appeared co-operative when he attended for interview and subsequently completed your firm's questionnaire, information recently provided by his creditors suggests that full disclosure of all of his assets may not have been given and that he may not have been entirely truthful when completing his bankruptcy questionnaire.

Requirements

Prepare a memo for the Trustee. For each of the 5 cases, set out your proposed strategy for progressing the case during the course of the next 3 months. Where appropriate, explain what further enquiries should be made or investigations undertaken.

Mark allocation:

- a) Case 1: Mr Seattle (5 marks)**
- b) Case 2: Mrs Washington (3 marks)**
- c) Case 3: Miss York (3 marks)**
- d) Case 4: Mr Lauderdale (5 marks)**
- e) Case 5: Mr Houston (4 marks)**

(Total: 20 marks)

Question 4

IT IS MARCH 2023.

Estelle Simpson (“Estelle”) is a retired British Olympic showjumper who runs Green Meadows Equestrian Centre and Riding School (“Green Meadows”).

Estelle has recently received a statutory demand from HMRC in relation to unpaid personal tax of £94,214. She does not fully understand how the figure due to HMRC has been arrived at, but two years ago she appeared in a television documentary and received a significant one-off fee. Estelle accepts that there is an unpaid tax liability in relation to this fee but thinks that HMRC believes that she has continued to earn at this level.

In the light of the tax liability, Estelle wants to understand the level of cash likely to be generated by Green Meadows for the next six months from 1 April 2023 to 30 September 2023.

Green Meadows operates from a 75-acre estate owned by Estelle’s parents, Harriet and John Portland. The facility has both indoor and outdoor paddocks and currently stables a total of 25 horses and ponies.

The majority of Green Meadows’s income is from group riding lessons for children, but non-residential summer camps and single riding lessons are also offered. All must be booked and paid for in full, online, in advance. Funds are transferred from the merchant services provider into Green Meadows’s current account on the same day, subject to a service charge of 1%.

The programme for the next 6 months will be as follows: -

	Dates	Price	Capacity
Group riding lessons – block of 6 weeks with 1 x 1-hour lesson each week	Blocks begin: <ul style="list-style-type: none">• 1 April• 13 May• 24 June• 9 September	£420 per block of lessons	Maximum of 250 places for each block
Non-residential summer camp – looking after a Pony for a week, including a daily lesson	Weeks beginning; <ul style="list-style-type: none">• 29 July• 5 August• 12 August• 19 August• 26 August• 2 September	£375 per camp	Maximum of 50 places for each week
Single riding lessons	Subject to availability	£80 per one hour lesson	

Clients pay for their children’s lessons the day before they start. Estelle’s expertise and reputation mean that lessons are exceedingly popular and the riding school is consistently at 90% capacity. The remaining 10% of available capacity is offered on an ad hoc basis to people who wish to book single riding lessons. Around 10 hourly lessons are booked per month.

Green Meadows employs 15 people, 6 of whom, including Estelle herself are instructors. The others are involved in caring for the horses and ponies. The employees’ wages are paid on the 28th of each month. Gross monthly wages are £19,000, except in August when wages are around 25% higher due to overtime and additional hours paid to staff in relation to the summer camps. Net wages are around

79% of gross pay and PAYE/NIC is normally £6,000 per month. Pension contributions are paid by Green Meadows at 3%.

Hay and food cost Green Meadows £130 per horse/pony per month. The feed supplier has advised that from 1 June rising costs mean that he will be increasing prices by 20% The feed supplier allows 30 days credit.

In September, the animals receive their annual tetanus vaccine and their flu vaccine which cost £35 per vaccine. The dental technician carries out 6-monthly check-ups in April and October at around £50 per animal. Estelle estimates that other veterinary costs are around £1,500 per month. All veterinary costs must be paid for at the time of treatment.

Estelle makes a payment of £20,000 per month to her parents which covers rent, rates, utilities and insurance. She has additional costs for bookkeeping, payroll and digital marketing which she estimates to be around £2,000 per month.

In May, in advance of the summer camps, Estelle plans to attend a horse sale and to buy 3 new horses to allow 3 of the older horses to cut down on their workload. Livestock has to be paid for on the day of purchase and she believes she will need a budget of £30,000 for this. At the same time, she will need to renew and update tack and other equipment and estimates this will cost another £5,000. Estelle expects to be allowed 60 days credit for this.

The present balance of funds in Green Meadows's bank current account is £2,203.

Requirements

- (a) Stating any assumptions you make, prepare a monthly cashflow for Green Meadows for the 6-month period ended 30 September 2023.

Note: ignore VAT

(10 marks)

- (b) Explain the implications of the statutory demand for Estelle and suggest steps that she should consider taking in the circumstances.

(4 marks)

IT IS NOW NOVEMBER 2023.

You are a manager working for Kerry Kansas, an Authorised Insolvency Practitioner.

Yesterday an award of sequestration was made in respect of Estelle on a petition presented to the Court by HMRC and Ms Kansas was appointed Trustee. Ms Kansas is satisfied that there are no ethical reasons that prevent her from being appointed. You have been provided with some information with the papers, including the April to September cashflow. Harriet Portland contacted you earlier today and advised you that she and Estelle were on their way to see you to discuss matters.

At your meeting, Harriet advised you that she and her husband were keen to buy the horses, ponies and equipment of Green Meadows from the Trustee for the sum of £60,000 and suggested that they could make payment of an initial sum of £25,000 today with the balance payable in 3 months when they have liquidated some personal investments.

Requirement

- (c) Set out the matters that the Trustee should consider when deciding whether to accept this offer.

(8 marks)

Subsequently, on 29 November 2023 you and the Trustee meet Estelle to discuss her sequestration and specifically any Debtor Contribution Order (“DCO”) that could be made.. You learn the following:

- Estelle is about to start managing the Equestrian Centre for her parents’ company, Green Meadows Limited, which has purchased the horses, ponies and equipment previously owned by Green Meadows. She will be receiving an annual salary of £25,000. In addition, she is paid an annual retainer by a television company of £6,000 to provide occasional commentary on show jumping events. She also expects to receive additional income of £25,000 for commentary during the Paris 2024 Olympics;
- Estelle lives with her husband in a cottage on her parents’ estate. They pay rent to her parents of £2,250 per month which includes council tax and utilities. Estelle’s husband is a Formula 1 track systems technician and spends large parts of the year away from home. Estelle does not know how much he earns;
- Estelle has a convertible sports car on a PCP agreement which costs £737 per month. The agreement is due to expire in July 2024 when a balloon payment of £8,000 will be due;
- Estelle owes £1,000 to her sister which she will be repaying at the rate of £250 over the next 4 months;
- in view of her TV and other public appearances, Estelle spends around £750 per month on clothes and beauty treatments; and
- in addition to the debt due to HMRC, Estelle owes around £35,000 on 4 credit cards. The contractual minimum payments are around £900 per month.

Requirements

(d) From the information provided, comment on the level of income and acceptable expenditure which would be allowed when putting in place a DCO for Estelle. Outline any additional information and supporting documentation you will require.

(6 marks)

(e) Set out the process required to put in place a DCO with Estelle.

(2 marks)

After your meeting, Estelle contacts the Trustee with more information about her affairs, as follows:

- following bad publicity after a very recent drink driving conviction, the TV company has decided to part ways with Estelle but has agreed make a severance payment to her of £5,000;
- a Reality TV Show has contacted Estelle to invite her to appear in a series to be filmed in the Sahara Desert in April 2024 for which they would offer an appearance fee of £10,000 with a prize of £100,000 for the winner;
- Estelle has 3 parking fines from 2022 outstanding and is likely to receive a further fine following her drink driving conviction;
- Estelle has student loans of around £25,000. She has not so far made any repayments; and
- Estelle has remembered that in June 2020, in addition to a Bounce Back Loan for Green Meadows, she applied for a Bounce Back Loan for a limited company she has since dissolved. Both loans were for the maximum sum of £50,000. No repayments have been made in respect of either loan and no funds remain, their having all been used to feed and care for the horses on the estate and to buy a new car for Estelle’s husband for £45,000.

Requirement

- (f) In preparation for responding to Estelle, prepare a note to Ms Kansas setting out how each of these issues should be addressed and any further action you need to take. (10 marks)

(Total: 40 marks)