

Joint Insolvency Examination 2022 (Scotland)

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 references to the Bankruptcy (Scotland) Act 2016 and references to Sections and Schedules are to Sections and Schedules of the Act.

References to Sections and Schedules of other legislation will mention that other legislation.

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 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 15 November 2022 you were appointed as Trustee in the Bankruptcy of Ian Hunter ("Mr Hunter"), following an Award of Sequestration being made by the Court. This followed a petition by HMRC and warrant to cite the debtor being granted by the Court on 26 September 2022. You are aware that Mr Hunter is a sole trader.

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, although you couldn't find a copy of the lease.

You found copy bank statements in respect of an account held in the 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?**

(16 marks)

Total: (20 marks)

Question 2

You are a manager at an Insolvency Practitioner firm.

Your colleague, Kate Laverty has recently been appointed as Trustee in the Bankruptcy of Ted Arnott ("Mr Arnott"). The Award of Sequestration was made on 28 October 2022 following a petition presented to the Sheriff Court on 5 September 2022 and warranted by the Sheriff on 7 September 2022.

Mr Arnott's only known asset is a solely owned property at 27 Gladstone Drive. 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 copies of the Land Certificate of the property and to complete a search in the Register of Inhibitions to check that the Award of Sequestration has been properly registered. 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 a copy of the Land Certificate from Registers of Scotland Online and an Inhibition Search. These confirm that the property is solely owned by Mr Arnott, is free of mortgage and that the Award of Sequestration has been properly recorded. However, the following entries also appear in the proprietorship and charges sections of the Land Certificate and in the Inhibition Search.

(05.05.2017) Disposition in favour of Ted Arnott, registered 05 May 2017 of the subjects in this Title, grants a liferent in favour of Sheila Arnott of 27 Gladstone Drive, Shelly, AB3 4SH for a period of 10 years from 03 May 2017.

(16.11.2017) Inhibition registered against Ted Arnott by Cottan Credit Limited.

(08.07.2022) Inhibition registered against Ted Arnott by The Money Claims Centre.

(12.08.22) Charging Order by Shelly Council, incorporated under the Local Government etc. (Scotland) Act 1994, in exercise of powers conferred by section 46A of the Building (Scotland) Act 2003 – Charging the subjects in this Title with the repayable amount of £18,250.

(07.09.22) The subjects in this Title are affected by a caveat in terms of section 67(2) of the Land Registration etc. (Scotland) Act 2012 granted by Shelly Sheriff Court in relation to an action raised under section 67(1) (a) of the said Act in favour of Margaret McMahon of 29 Gladstone Drive, Shelly, AB3 4SH for a period of 12 months as of 5 September 2022.

(12.09.2022) Inhibition under a restraint order made under the Proceeds of Crime Act 2002 on 6 September 2022 (Court reference AB12344X) stating that no disposition of the subjects in this title can be made by Ted Arnott except with the consent of the Court.

Requirement

- (a) Prepare a briefing note for the Trustee. Explain, for each of the six 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 Laverty has recently been appointed as Trustee in the 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 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.

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.

Mr Hastings also explained that the day before, he had received a visit from a Sheriff Officer who served him with a statutory demand for unpaid Council Tax. Mr Hastings’ neighbour who was present at the time, impressed upon Mr Hastings the need to get proper advice in relation to his financial position.

Including the unpaid Council Tax, from the papers you have been provided with it appears that Mr Hastings’ debts are around £20,000.

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.**

(14 marks)

You sent the email to Mr Hastings but did not receive a response. Four weeks later, however, Mr Hastings calls you and explains that his circumstances have improved. He has been offered a job which he will start next week. He estimates that after paying his living expenses, he would have around £300 per month to pay to his creditors. If he successfully completes his 12 month probationary period, he expects this to increase by £200 per month.

He also mentions that during your last meeting he had completely forgotten that he and his sister jointly own his elderly parents’ property in Yorkshire which was transferred to them a number of years ago when his parents began to get concerned about potential future care home fees.

Requirement

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

(6 marks)

Total: (20 marks)

Question 4

You are an Authorised Insolvency Practitioner.

A contact in a local accounting firm asked you to meet with 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 Law Society of Scotland. 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>	363,000	
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>	<u>165,625</u>	M
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)	Employers' 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	5,939
Paralegal	30,000	3,552	944	944	2,666	3,610
Paralegal	25,000	2,800	744	744	2,003	2,748
Cashier/admin	<u>21,000</u>	<u>2,198</u>	<u>584</u>	<u>584</u>	<u>1,473</u>	<u>2,058</u>
Annual cost	<u>119,500</u>	<u>14,134</u>	<u>3,756</u>	<u>3,756</u>	<u>10,597</u>	<u>14,355</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 days from 4 to 5 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 Ifield 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 a 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	Balance
		£	£	£
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 - lfield	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 the Trustee in the sequestration of Lakewell Taylor.

Requirement

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

(5 marks)

Total: (40 marks)