

Joint Insolvency Examination Board

13 NOVEMBER 2024

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 2024. References to ‘the Act’ are to the Bankruptcy (Scotland) Act 2016.

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 and the Trustee in the sequestration of an individual who has failed to cooperate with you.

Requirements

- (a) Set out the powers that are given to a Trustee to enforce a debtor's cooperation. (3 marks)**

- (b) Explain how a Trustee can progress their administration of a sequestration estate in the absence of cooperation from the debtor. (17 marks)**

Total: 20 marks

Question 2

You are an Authorised Insolvency Practitioner.

On 21 October 2024 you were appointed as the Trustee of Jane Alfaro ("Mrs Alfaro") following an Award of Sequestration against her following a petition presented to the Court by a creditor on 30 August 2024.

The petitioning creditor is owed approximately £25,000. You have established that Mrs Alfaro has a number of assets including an interest in a jointly owned property, cash at bank of £30,000 (which all relates to an inheritance received following the death of her grandmother on 15 February 2023), a Rolex watch and a life insurance policy. She has also advised you that she shortly expects to receive payment of around £9,000 from an equal pay claim settlement from her employer. An initial review of Mrs Alfaro's income and expenditure suggests that surplus income of around £400 a month could be made available through a Debtor's Contribution Order.

Requirement

- (a) Calculate the amount that would be required to discharge the debts, costs and expenses of the sequestration in full as at today's date. Clearly state any assumptions that you make.

(5 marks)

Your initial conclusion based on the disclosed asset and liability position was that Mrs Alfaro would be able to recall the sequestration through paying her debt and the costs of the process in full. However, you have discovered that Mrs Alfaro was previously sequestered on 1 November 2022 and that an Insolvency Practitioner at another firm was appointed as her Trustee.

Requirements

- (b) Set out the enquiries that you should make in relation to both the previous sequestration and the assets disclosed to you by Mrs Alfaro and explain why these enquiries are necessary.

(11 marks)

- (c) Explain how the previous sequestration might impact upon Mrs Alfaro's ability to recall the second bankruptcy.

(4 marks)

Total: 20 marks

Question 3

You are John Pitt, an Authorised Insolvency Practitioner and a partner in Pinzon LLP.

On 6 November 2024 a Ms Seymour attended your offices in a very distressed state. You managed to establish that she had been the victim of online romance fraud. Following the death of her husband in 2021, Ms Seymour had opened a number of social media accounts. Whilst online she was befriended by a wealthy widower, Barry Bartolome. They started speaking on the phone for hours every day. Ms Seymour had trusted Barry implicitly and had looked forward to the day when they could meet in person.

Barry had explained that, for tax reasons, all of his money was in accounts in the name of his late wife and that he was struggling to access this as a result of delays with the finalisation of Confirmation of her estate. Ms Seymour had no reason to doubt Barry and had transferred money to him each month to help with his living costs. Ms Seymour's only income was the state pension and a small private pension, which left her with limited spare income, but she had some savings which she used to make the payments to Barry.

Once her savings account had been emptied, Ms Seymour reluctantly told Barry that she was unable to transfer any further money to him. However, this coincided with Barry receiving a large tax bill which had to be paid before the monies in his late wife's estate could be released. Ms Seymour therefore agreed to borrow money from a number of lenders and credit card companies which Barry helped to identify. Barry explained that he did not want further payments to be made to his bank account as this may attract the attention of HMRC and further complicate matters. Instead, Barry asked that the money Ms Seymour had borrowed be paid to him in cryptocurrency. Ms Seymour did not know anything about cryptocurrency so gave Barry her bank account details in order that he could set up online banking and arrange for the transfers into cryptocurrency to be made.

Whilst Barry had promised to repay her as soon as the tax bill was paid and money was received from his late wife's estate, he failed to do so. Ms Seymour could not understand why Barry had stopped contacting her and was worried that he had become unwell.

Letters of demand then started to arrive following Ms Seymour defaulting on the monies she had borrowed. Ms Seymour ignored the letters as she was confident that Barry would make contact and repay her as soon as he could. However, during a daytime television feature on romance fraud Ms Seymour was shocked to see a picture of Barry and to hear from other women who had also transferred money to him. Following these revelations Ms Seymour became very depressed and did not open any of her post for some time. However, she did eventually do so and was shocked to find that once interest and default penalties were taken into account, she owed around £50,000. She has also recently received a statutory demand from one of her creditors.

Ms Seymour explained to you that she was embarrassed about how foolish she had been and that you were the only person she had spoken to about the payments she had made to Barry and the debts she had accumulated. You were provided with all of the correspondence received by Ms Seymour from her creditors, together with her bank statements. At the end of the meeting, you confirmed that you would consider everything and make arrangements to have another meeting as soon as possible.

Requirement

- (a) **In advance of the proposed meeting, prepare a list of the actions to be taken and the enquiries to be made, by either you or Ms Seymour within the next 14 days.**

(16 marks)

At your subsequent meeting with Ms Seymour, she explained that she had finally spoken to her family about the money she had paid to Barry and the fact that a statutory demand has been served on her. She told you that her children do not have much money but have said that they will do whatever they can to try and raise money to help.

You advised Ms Seymour that, if her children were going to help as suggested, they needed to take their own independent advice on the situation. At her request, you suggested a number of local Insolvency Practitioners who could be approached. You have subsequently learned that David Tortuga, an Authorised Insolvency Practitioner and a partner in Azul LLP, has been instructed by Ms Seymour's children and that Mr Tortuga has been informed about Ms Seymour's financial plight.

Requirement

- (b) Set out the advice that Mr Tortuga should give to Ms Seymour's children. Explain whether it would be appropriate for them to raise funds to assist their mother and highlight any risks for them were they to do so.**

(4 marks)

Total: 20 marks

Question 4

You are a manager in the office of Isla Caldwell, who is an Authorised Insolvency Practitioner.

Isla explains that following a debtor's application by Samuel Hood, he was made bankrupt yesterday (12 November 2024) and she was appointed as the Trustee in his sequestration.

Samuel is a sole trader and has run a successful and long-established locksmith business called "Hoods" which he inherited from his grandfather over 40 years ago. Hoods is the only locksmith in the town of Baltra. As well as responding to calls from local individuals and businesses who need assistance with their locks, Hoods holds the master keys for larger businesses and local authority buildings, and will attend their premises in security incidents. Hoods employs two locksmiths, two shop assistants, an apprentice and an office manager.

Samuel and his son are each 50% shareholders in a construction company Green Turtle Limited ("the Company") which is building a small development of five residential properties. The development has not run to budget and over the last year Samuel has lent £150,000 from Hoods's business bank account to the Company. The Company has been unable to repay this. At the end of October Samuel had no funds to pay his October payroll at Hoods and made his employees redundant, sent them home and as a result effectively closed the business. Samuel is now 72 and in poor health and while he would like to do the right thing for his employees, has no desire to re-open the business.

You agree with Isla that you will both meet Samuel this afternoon at Hoods's business premises to discuss the sequestration appointment.

In the meantime Isla advises you that:

- Samuel has been approached on several occasions in recent months by Theodore Woolf, who runs a similar locksmith business in a town around 30 miles away. Whilst Theodore Woolf has no interest in acquiring the premises of Hoods, he would be interested in acquiring the name, phone numbers and digital/social media presence of Hoods in order to obtain more work for his existing team.
- Hoods traded from owned premises on Baltra High Street which includes a shop where keys can be cut while you wait, a small workshop housing the key cutting machines and all the master keys, and a small office.
- A small invoice discounting facility is in place with Hawk Factors who advance 60% of sales invoiced which remain less than 90 days old.

When you return to your desk you find that you have been left three voicemails:

- The first is from Karen who explains that she is Samuel's office manager. She understands you are coming to the office later today. Samuel has asked her to attend to help him and she would like to know if there is any information you would like her to prepare in advance of that meeting. She does wonder though how she will be paid. She also says she has the petty cash and float from the till of £523.72. She leaves her email address and mobile number.
- The second is from Theodore Woolf, who says that Samuel has advised him that Isla has been appointed as Trustee and now controls his assets. Theodore says that he would be very interested in making a quick offer to buy the business name and would be prepared to pay £20,000 for the ability to take on the trading style of Hoods. He says that time is of the essence though as any goodwill will quickly dissipate the longer phone calls and website enquiries go unanswered.

- The final message is from Joe who says he was an employee of Samuel. He wonders when he can expect to receive his wages and what will happen next. He also says that his Hoods van is parked outside his house but if you want it back you will need to come and get it.

Requirements

- (a) Outline how you will respond to the three voicemails which have been left for you.

(8 marks)

- (b) Other than the issues already addressed in your responses to these three calls, set out the matters which you will need to address and the initial actions you will need to take in the next 7 days in relation to this sequestration.

(12 marks)

IT IS NOW JANUARY 2025.

You have made progress with the administration of Samuel's estate:

- You approached three parties whom Samuel had identified as possible purchasers for the business assets. Two of them declined to make an offer but you have entered into an agreement with Theodore Woolf to sell the name and key cutting machines. The consideration paid at completion was £20,000. In addition, Theodore will pay 2% of turnover generated from the business acquired by him for 12 months, payable monthly in arrears. Hoods's turnover for the year ended 30 June 2023 was £1,040,000, of which £100,000 was generated by the shop.
- Gross sums due to the former employees of Hoods have been calculated to be:

	£
Arrears of wages	15,481
Pay in lieu of notice	3,096
Holiday pay	3,715
Redundancy pay	30,518

- You have established that the security granted to Albatross Bank over Hoods's business premises is valid. Albatross is owed £25,500 being the amount outstanding on a business overdraft.
- Other sums due by Hoods are:

	£
PAYE/NIC	4,025
Employer's NIC	3,570
Pension Contributions	500
VAT (two quarters)	45,000
Business and water rates	5,000
Various general trade suppliers	15,000
Fuel cards	1,250.

- Samuel has given personal guarantees to two plant suppliers and a materials supplier in respect of monies due by the Company. The total amount due under the guarantees is £200,000.

- Hawk Factors has advised that, at the date of Isla's appointment, the debtors' ledger stood at £232,000 of which £210,000 was less than 90 days old. The sum due to Hawk Factors was £126,000 which they have now recovered together with costs of £11,000. They are happy to return the ledger or alternatively would collect it out for a fee of 20% of sums realised.
- You asked Darwin Valuers for a valuation of Hoods's shop and workshop premises. The surveyor has advised that it will be difficult to sell the shop and workshop premises for their existing use with demand on the High Street being so poor. He estimates that in time you may be able to sell the premises for £60,000. However, due to the position of the premises there is a possibility that it may be attractive to a local developer who wants to build flats on the same block and if so the likely value of the land would be £100,000.
- Most of the key cutting equipment and contents of the workshop is old and likely to be worth around £10,000. The 3 vans owned by Hoods are worth around £30,000.
- From a property search on Samuel's home address you have noted that this was sold by Samuel and his wife to another family member, probably his daughter, on 29 August 2023 for £125,000. Although you have not asked for a formal valuation for the property, the surveyor who attended the shop premises indicated to you that the residential property would have been worth around £450,000 in August 2023.
- During your discussions with Samuel he has advised you that he intends to retire with a small income from a private pension and a state pension, and that he has no other assets.

Requirements

- (c) **Based on the information you have gathered to date, prepare an Estimated Outcome Statement which shows the estimated return to the unsecured creditors of Samuel. Clearly state any assumptions that you make.** (14 marks)
- (d) **Prepare a brief note to Isla setting out what you believe the next steps should be in relation to Samuel's home and why.** (6 marks)

Total: 40 marks