

The Joint Insolvency Examination

November 2024 sitting

Senior Moderator's Remarks

Introduction

These remarks are written following the publication of the results of the November 2024 sitting of the Joint Insolvency Examination ("the Examination"). They should be read in conjunction with the individual reports prepared by the Examiners for the two papers in England and by their counterparts in Scotland.

How candidates fared at the 2024 sitting

The number of candidates sitting one or more papers in 2024 was 172. This was an increase of 14% over the previous three years when, in each year, around 150 candidates sat at least one paper. In 2024 the vast majority (167) attempted the English versions of the papers.

Across the cohort there were 65 candidates who sat the personal insolvency paper and 144 who sat the corporate insolvency paper. There were 30 candidates who were successful in passing the personal insolvency paper, a pass rate of 46%. This was slightly lower than the pass rate for the 2023 sitting (50%) but commensurate with the trend of recent years. The results for the corporate insolvency paper were a material and very welcome improvement on the very poor results in 2023. Of the 144 candidates attempting the paper in 2024, 67 were successful, a pass rate of 46% which is the highest achieved since 2019.

Bad habits – but some good news

Following the poor corporate insolvency results in 2023 and after my comments on the 2023 sitting had been published, the decision was taken to share with representatives from the tutoring organisations and major insolvency firms anonymised examples of marginal candidates' answers.

This exercise demonstrated to a wider audience the range of approaches that candidates can and do take when formulating their answers and committing them to paper. It also demonstrated that the perennial issues to which I have drawn attention over the years persist, and that perpetuating these "bad habits" is preventing too many candidates from presenting scripts that are passworthy.

I am pleased to say that, during my own review of scripts for the 2024 sitting, I sensed an improvement in the way in which some candidates had presented their answers. As in recent years, there was rarely any visible evidence of planning but it was good to see that some candidates had apparently given thought to how their answers could be presented in a logical, organised way. Candidates who did this will invariably have been awarded better holistic marks.

This improvement was far from being universal. However well laid out, a candidate's answer will not be acceptable if they (1) do not take the time to appreciate what is being required of them, (2) spend time answering a question that has not been asked and/or (3) wander off the subject. The oft warned against practice of a candidate committing to paper everything they know on a particular topic (the "checklist" approach), in the hope of being awarded marks along the way, is still much in evidence. Finally, and worryingly given that the questions set by the Board are essentially practical in nature, too few of the answers that I looked at during my own review demonstrated a deep understanding of the subject being examined and an appreciation of the practical steps that should be taken to address the problem to which a solution was sought.

None of the issues in the foregoing paragraph is new. I have said in previous remarks that candidates who persist in perpetrating these "bad habits" are not presenting scripts that can be

considered as passworthy. Such scripts are at best borderline and are usually at real risk of not passing.

Final remarks

Too many candidates are falling just short. This year on the corporate insolvency paper 20 candidates (14% of the cohort) achieved a final mark between 1 and 3 marks below the pass mark. The equivalent number on the personal insolvency paper was 8 (12% of the cohort). The purpose of the exam is to identify candidates who are able to demonstrate that they have sufficient knowledge of insolvency law, procedure and practice to enable them to carry out the functions of an authorised insolvency practitioner. This is the yardstick by which candidates are measured and candidates whose scripts do not show the required knowledge will not pass. With so many scripts failing by very few marks, if candidates take heed of these remarks it would not take much for the good pass rates achieved in 2024 to be bettered in 2025.

JOINT INSOLVENCY EXAMINATION BOARD
CORPORATE PAPER
EXAMINER'S REPORT AND MARK PLAN FOR THE NOVEMBER 2024 SITTING

General comments

As reflected by the published results, it is encouraging that the number of candidates achieving success in the corporate paper has increased based on recent previous year's results. I provide, below, details of the performance of the candidates on each question but set out my general thoughts on what makes the difference between a "pass" and a "fail" candidate.

For both unsuccessful candidates and those that are attempting the examination for the first time, I will attempt to set out, the characteristics of a good quality, well answered paper and those of a submitted script that does not score well enough to achieve a pass.

As explained in my previous years report, the main issues in the poorly answered papers are:

- failing to read the question properly and understand the requirements in full.
- failing to apply practical experience and knowledge to the answer.
- failing to manage time in the exam and answer questions in a structured manner
- failing to structure numerical answers in a way that allows efficient answering

The more successful candidates:

- set out their answers in a structured way
- provide answers relevant to the facts of the question.
- attempt all questions including the numbers questions (a candidate not attempting the numbers questions is unlikely to achieve the required pass mark)
- read the question carefully and identify the full requirements
- apply basic practical knowledge from experience to the facts of the question
- Demonstrate exam technique

The candidates that demonstrate the above score consistently well on all questions, both numeric and written questions.

Comments on each question

Question 1

This question came from the practical angle of a group of creditors, in their view, disgruntled with the progress and conduct of the appointed Liquidator in a Creditors' Voluntary Liquidation. They had several questions and concerns they wanted addressing with a view to replacing the liquidator.

Part (a)

The first part of the question asked candidates to set out the steps required to remove and replace the Liquidator.

Generally, this was not well answered with a lot of candidates not setting out the instances in which a Liquidator can be removed, the procedure required, the level of creditors required to commence the procedure (which was also clear in the Question facts that threshold was easily reached), the duties of the incumbent Liquidator once the request had reached the necessary threshold etc.

Part (b)

Candidates were examined on an ethical issue around the threats to Objectivity and whether the current liquidator should have accepted the appointment due to the company being an audit client of the same firm.

This was answered well with a lot of candidates obtaining full marks.

Part (c)

This part of the question requested candidates to set out the functions of a committee, the responsibilities and an overview of how one is formed. This was answered well.

Part (d)

This part was seeking an overview of the Liquidator's duty to submit a conduct report to the Insolvency Service. This was generally not answered well.

The better scoring candidates:

- identified that the current liquidator should have already submitted the conduct report.
- set out the general duties of the Liquidator in respect of reporting
- explained what is contained within the "report"
- assuming a new liquidator appointed, what they should do if any new evidence of unfit conduct is identified
- the potential outcomes for the Directors if unfit conduct discovered

Part (e)

Again, this part was not answered well by the general body of candidates.

The question facts set out certain financial information which indicated that the statement of affairs and / or the deficiency statement may be incorrect and there may be a possible intercompany debt that had been written off after the last financial statements had been prepared.

The general thoughts are that candidates struggled with time management on this question and possibly didn't leave sufficient time to pick up some very practical marks around what further investigations would need to be carried out.

Question 2

This is the first time that Restructuring Plans have been examined in depth at JIEB. When stripped back, the question was largely a “numbers question” requiring the preparation of an Estimated Outcome Statement (“EOS”) at a future point when a Restructuring Plan (“RP”) may be sought. The approach was from a firm of solicitors requiring some assistance with the EOS, the views on the Relevant Alternative that should be used and thoughts of the proposal vs the Relevant Alternative.

Based on the high number of candidates that did not attempt different parts of the question, and the average low mark achieved, it seems that candidates struggled with the question. All parts of the question were not answered well.

The candidates that did well, identified that this was a question requesting an EOS and identified that a sale of the business and assets in a pre-pack administration was the relevant alternative and did not waste valuable time calculating potential outcomes in a forced sale situation.

Part (a)

This required the preparation of an Estimated Outcome Statement at 28 February 2025 being the estimated timeframe for achieving a Restructuring Plan. Lots of information was available in the question to prepare the EOS.

The better candidates recognised that the Relevant Alternative was the pre-pack sale and prepared the EOS for this one scenario only. Conversely, a lot of candidates wasted time preparing a more traditional form of EOS comparing Net Book Values, Going Concern, Forced Sale values and in some cases to a CVA which wasn't required.

Part (b)

This requested the views on the choice of relevant Alternative used in the EOS. There were various “pointers” in the question facts showing that a sale in Administration was possible and should be used as a benchmark as opposed to, say, a forced sale, winding up scenario.

Part (c)

This required candidates to compare the outcome of the Relevant Alternative to that being proposed in the Restructuring Plan. Those candidates that did well, recognised that the Relevant Alternative provided a better result for HMRC as preferential creditor and, as a result, needed improving or risk the RP being rejected by the Court.

Lots of candidates listed out the general advantages and disadvantages of Restructuring Plans or compared them to other insolvency procedures.

Question 3

This question was set as the candidate being in the role of compulsory liquidator in a case where there were various transactions that had been discovered that required further investigations.

This question was generally answered well with a lot of candidates setting out well structured answers relevant to the facts of the question. The candidates that did not do well on this question appear to have struggled with time management and took an approach of listing out potential antecedent transactions in general without linking them to the question facts.

Part (a)

This part sought the general obligations and duties of a Liquidator when investigating the affairs of a company. It was effectively testing candidates understanding of SIP 2.

The question was generally answered well.

Part (b)

This provided several issues that had been discovered in initial investigations and what further work should be done to potentially seek recoveries for the estate.

The question was answered well by most candidates.

Question 4

This question was predominantly a “numbers” question asking the candidate to prepare an EOS to enable the Administrators Proposals to be prepared. The EOS should have indicated that there were sufficient realisations available to make a distribution to unsecured creditors.

The flow of the question then sought drafting of the proposals in relation to the exit and how remuneration approval would be sought on the basis of achieving statutory purpose 3(1)(b) and how this, and the approval of the proposals would contrast with a situation where the statutory purpose (3)(1)(c) was being followed.

The overall standard of scripts in this question was mixed with good overall results on the numbers part but poor results on the remainder.

Parts (a) and (b)

These parts requested candidates to work out amounts due to the main customer following a period of trading and then the estimated outcome to creditors based on the Administration to date and updates from agents.

Despite a good proportion of candidates scoring full marks on part a, this was not answered particularly well in the main and candidates missed out on marks by failing to take a methodical approach to each contract. Part b was answered well with candidates scoring well.

Part (c)

This part of the question required candidates to identify that secured creditors and preferential creditors would be paid in full and there would be a distribution available to unsecured creditors. Based on this, the requirement was to set out what would be contained in the proposals regarding exit from administration and other statutory requirements.

It appeared that a lot of candidates did not read the requirements of the question properly or failed to apply practical experience. This was generally answered poorly with wrong answers being provided

Part (d)

Following on from part c, this question was asking candidates to explain how fee approval would be sought in the circumstances. As above, this was answered poorly with candidates failing to identify that the body of unsecured creditors would need to provide approval.

Part (e)

This requested candidates to compare the ways in which approval of the proposals and remuneration is sought under Para 3 1 b and 3 1 c. This was answered poorly and very few candidates identified that there would be no difference (to part d) in how remuneration would be sought. Many candidates failed to highlight the fact that in situations where para 3(1)(a) and 3(1)(b) cannot be achieved that Para 51 shall not apply and the proposals are deemed approved unless creditors seek a decision procedure to obtain approval.

QUESTION 1

(a) Is it possible to remove and replace a Liquidator? If yes, what is the procedure for us to follow? If possible, we would like to remove the Current Liquidator and replace him with someone from your firm. (5 marks)

1A a	It is possible to remove and replace a Liquidator in certain circumstances
1A b	A liquidator may only be removed from office by an order of the Court or in this instance under S171 (2) (b) of the IA
1A c	being a decision of the Company's creditors made by a qualifying decision procedure instigated for that purpose in accordance with the Rules
1A d	Under Rule 15.18, the Creditors can request the current liquidator to commence a decision procedure to remove and replace the liquidator
1A e	In this scenario, assuming that no creditor exceeds 25% of all creditors, the request must include: <ul style="list-style-type: none"> a statement of the requesting creditor's claim
1A f	<ul style="list-style-type: none"> together with a list of the creditors concurring with the request and the amounts of their claims
1A g	<ul style="list-style-type: none"> confirmation of concurrence from each creditor
1A h	If one of the creditors is more than 25%, then they can commence the process themselves (without the need for a list of creditors concurring and their note of support)
1A i	The current liquidator must instigate a decision procedure for the removal of the liquidator if 25% in value of the Company's, excluding those connected, request it
1A j	The Current Liquidator or Convenor, must not later than 14 days after the request, provide the requesting creditor with an itemised estimation of costs of the decision procedure
1A k	If these costs are not paid then the convenor does not have to commence the process
1A l	(a) Once the convenor has received the requested amount the convenor has 28 days to complete the decision procedure
1A m	(b) If the convenor does not request the costs then after 14 days from the request the convenor must initiate the procedure within 28 days
1A n	The process must be commenced 28 days from the earlier of (a) or (b)
1A o	The costs of the process are taken from the deposit unless the creditors decide that they are to be an expense of the liquidation
1A p	In this instance, the deposit will be returned to the requesting creditor

1A q	Practically, as the creditors appear to represent more than 25%, the decision procedure can be commenced
1A r	At the decision procedure, as creditors requesting the removal and for us to replace are more than 50% then this should be achievable

(b) We understand that the company in liquidation was an audit client of PIN Accountancy LLP. Is this acceptable? (3 marks)

1B a	There are five fundamental principles of ethics for Insolvency Practitioners
1B b	Objectivity is one of the five Fundamental Principles -
1B c	This is not to compromise professional or business judgements because of bias, conflict of interest or undue influence of others
1B d	Where a service has previously been carried by the Current Liquidators firm, there are potential: <ul style="list-style-type: none"> - Self-interest threats (if for example an error is discovered relating to a service carried out by the firm) and
1B e	- Self-review threats (where the firm has previously carried out professional work of any description)
1B f	When the IP considered the appointment, they should have identified a threat to compliance and evaluated whether that threat was at an acceptable level
1B g	It may depend on what service was being provided by PIN as the term “auditor” is a general term for anyone providing accountancy services
1B h	Assuming in this instance that audit related work has been carried out by the Current Liquidators firm, the appointment should possibly not have been taken
1B i	The firm or an individual within the firm completing audit related work, is a specific example in the Code of Ethics where the IP should not take the appointment (2510.1 Insolvency appointment following audit work)
1B j	It is assumed that a Significant Professional Relationship would have existed
1B k	and it is unlikely that appropriate action can be taken to reduce the threat to compliance with the fundamental principles

(c) Initially the creditors did not consider that a creditors’ committee was required. Now that we have co-ordinated a group of seven creditors, which makes up most of the unsecured creditors in terms of value, we would consider forming a committee. Given that the Current Liquidator was appointed some months ago, have we lost the opportunity to form a committee? If we can form a committee, we would like to understand its functions and responsibilities and be given an overview of how one would now be formed. (4 marks)

1C a	No, you have not lost the opportunity to form a committee
	The general functions and responsibilities of the Committee are to:
1C b	<ul style="list-style-type: none"> assist the Liquidator in discharging the Liquidators functions
1C c	<ul style="list-style-type: none"> act in relation to the Liquidator in such manner as may from time to time be agreed
1C d	Committee members will need to attend meetings from time to time with the liquidator to deal with various potential matters
1C e	One of the main responsibilities of the Committee is to consider and agree the remuneration of the Liquidator
1C f	On a practical point, there can only be between 3 and 5 members of a committee
1C g	Overview of formation:
1C h	<ul style="list-style-type: none"> The creditors decide at a decision procedure whether a committee should be established
1C i	<ul style="list-style-type: none"> The first stage is a simple majority vote (ie if more than 50% of voting creditors request then a committee should be established)
1C j	<ul style="list-style-type: none"> There must also be a decision procedure by creditors as to the membership (ie which members should form the committee)
1C k	<ul style="list-style-type: none"> The committee is not formally established until the Liquidator has sent a notice of its membership to Companies House

- (d) We have concerns about the conduct of the Directors. We have advised the Current Liquidator of our concerns but not heard anything back. Does a Liquidator have a duty to issue some kind of report to an official body that may see them get struck off? (4 marks)**

1D a	A Liquidator has a duty to prepare a report on the conduct of any director at the date of insolvency and anyone that has been a director in the preceding 3 years
1D b	The Conduct Report must describe any conduct, of those mentioned above, which may assist the Secretary of State, in deciding whether it is in the public interest that a disqualification order should be made
1D c	The Conduct Report must be submitted within 3 months unless the SoS has agreed an extension based on circumstances
1D d	In this scenario, the Current Liquidator has been in office over 3 months so this should have already been submitted
1D e	There is no requirement of a new Liquidator in this scenario to prepare another Conduct Report
1D f	However, if new information comes to the attention of the Liquidator (Proposed or Current) then they should send that information to the S of S ASARP
1D g	This “new information” is information that a Liquidator considers should have been included in a conduct report

1D h	Should we be appointed as Liquidator and we identify any potential misconduct then we can provide to the S of S
1D i	Should the SoS deem unfit conduct then they may seek an application to court to disqualify as a director or
1D j	Agree an undertaking with a Director that they will not be a director of a company in an agreed period
1D k	This period could be between two and 15 years

(e) What are your thoughts on this and how you would investigate and potentially attack this transaction? (4 marks)

1E a	The initial view of the estimated S of A is that it doesn't make sense
1E b	The known creditors of the Group are c£1.2 million and the deficiency is showing as £300k with no assets
1E c	Further investigations will need to be made into the financial position once appointed to understand
1E d	Likewise, the position with the debt due from the associated company does not make sense
1E e	It would appear that there is or was a debt due from the associated company for c£500k
1E f	It appears that this debt has been written off between the preparation of the last statutory accounts and the date of the statement of affairs
1E g	From basic investigations, it would appear that the associated company is solvent and owns an unencumbered property
	On our appointment we would:
1E h	- make enquiries to the directors as to the reasoning of the write off
1E i	- pursue the associated company for repayment of the debt
1E j	- obtain searches at Land Registry in relation to the property owned by the associated company
1E s	- Obtain a desktop valuation / valuation advice from an agent
1E k	- perform searches on the financial position of the Directors (to consider whether any action is commercial to run)
1E l	- investigate whether the £500k is the correct balance (could be higher due to the larger deficiency)
1E r	- obtain board minutes/books and records
	On the face of it, it would appear that there is either:
1E m	- misconduct by the Director/s in writing off the debt when it is recoverable (potential misfeasance action)
1E n	- an action for a Transaction at an Undervalue on the basis that the debt has been written of for nil consideration

1E o	- the write off has not occurred and there is a debt due from the associated company to be pursued
1E p	Initially, an attempt would be made to settle the matter amicably by seeking repayment (to minimise costs)
1E q	If this is not possible, legal action may be required including the issuing of proceedings which can be expensive and carry litigation risk
1E t	Liaise with professional advisers to consider any potential claim

Total marks: (20 marks)

QUESTION 2

(a) EOS (14 marks)

Spaghetizza Limited			
Estimated Outcome Statement			
Relevant alternative - Administration and pre-pack			
			£
Assets subject to fixed charge			
		Lease premiums	3,000,000
		Goodwill / IPR / Leasehold improvements	2,500,000
			5,500,000
Less: Costs			
	5%	Administrators Fees	(275,000)
	2.5%	Legal Fees	(137,500)
	2.5%	Agents Fees	(137,500)
			(550,000)
Available to Secured Loan Note Holder			4,950,000
Amounts owed to SLH			(10,250,000)
Shortfall to SLH			(5,300,000)
Assets subject to floating charge			
		Kitchen equipment	1,500,000
		Stock	1,250,000
		Cash	500,000
			3,250,000

Less: costs		
5%	Administrators Fees	(162,500)
2.5%	Legal Fees	(81,250)
2.5%	Agents Fees	(81,250)
		(325,000)
Available to preferential creditors		2,925,000
	Primary - assume tfrd in PP	
Secondary		
	HMRC - VAT	(5,750,000)
	HMRC - PAYE	(1,650,000)
Shortfall to Prefs		(4,475,000)
Shortfall to SLH - no availability under Floating Charge		(5,300,000)
Unsecured creditors		
	Landlords - retained sites	0
	Landlords - closed sites	(5,000,000)
	Local authorities - all sites	(1,500,000)
	Trade creditors	(2,500,000)
Shortfall to unsecured creditors		(9,000,000)
Total shortfall		(18,775,000)

Notes		
1 Leasehold premiums		
50 sites @ £50,000		2,500,000
50 sites @ £10,000		500,000
2 Goodwill / IPR /Leasehold improvements		
100 sites at £25,000 per site		2,500,000
3 Equipment - closed sites		
Not economical to collect and sell		0
4 Kitchen equipment		
100 sites @ £15,000		1,500,000
5 Stock		
100 sites @ £100,000		10,000,000
ROT suppliers		(5,000,000)
		5,000,000
25p/£		1,250,000

6 Cash	
Cash available	3,500,000
Rent	
100 @ £100,000 / 4	(2,500,000)
Est restructuring costs	(500,000)
	500,000
7 HMRC	
VAT	
30 Sept VAT qtr	3,000,000
Est to 30 November (two thirds of £3m)	2,000,000
	5,000,000
TTP	750,000
	5,750,000
PAYE	
October	1,000,000
November - estimate	650,000
	1,650,000

7 HMRC	
VAT	
30 Sept VAT qtr	3,000,000
Est to 30 November (two thirds of £3m)	2,000,000
	5,000,000
TTP	750,000
	5,750,000
PAYE	
October	1,000,000
November - estimate	650,000
	1,650,000
8 Landlords - retained sites	
Assume that liabilities will transfer on relevant alternative	
9 Landlords - closed sites	
50 sites @£100k	5,000,000
10 Local authorities	
150 sites at £10k per site	1,500,000

11 Trade creditors	
Per question	7,500,000
ROT	(5,000,000)
	<u>2,500,000</u>
12 Amounts owed to SLH	
Primary indebtedness	10,000,000
Interest - 3 months	250,000
	<u>10,250,000</u>

(b) Explain your rationale for choosing the relevant alternative used by you in your answer to Requirement (a). (2 marks)

2B a	The relevant alternative is whatever the Court considers to most likely to the Company should the RP not be sanctioned
2B b	In this particular matter, the largest shareholder and secured creditor has indicated that, if the RP was not approved, then they would buy back as a pre-pack
2B c	It is also known that there are parties that have expressed an interest in buying out of a pre-pack
2B d	In this scenario, it is considered that the appropriate relevant alternative would be a pre pack sale out of an administration
2B e	and not a liquidation / forced sale scenario

(c) Set out your initial thought on the prospects of the proposed restructuring plan being successfully implemented. (4 marks)

2C a	It is likely that the restructuring plan is going to be contested on the basis that :
	- HMRC are likely to receive more in the Relevant Alternative
	- certain creditors are not receiving any monies
2C b	Under Part 26A of Companies Act, if at least 75% of a class of creditor do not agree ("Dissenting Creditors"), the court can still sanction the plan (901G (1) and (2))
2C c	For the Court to do this, it needs to be satisfied that, under the plan, none of the creditors in the "Dissenting Class" would be worse off in the "relevant alternative". (901G (3)). ("the no worse off test")
2C d	The Court also requires that those classes of creditors who would receive a distribution in the "relevant alternative" (in the money creditors) agree to the plan (75% or more in a meeting). (901G (5))
2C e	HMRC are estimated to receive c£2.9 million in relevant alternative
2C f	HMRC to receive £2 million in the proposed restructuring plan
2C g	HMRC are almost certain (based on case law) to reject the plan
2Ch	In this scenario, HMRC are worse off under the relevant alternative and the Court will not be able to sanction on the basis of (901G (3)). ("the no worse off test")
2C i	Therefore recommended, if possible, to offer HMRC more in the RP than they would receive in the relevant alternative
2C j	Needs to be more that £2.9 million (answer in the EOS)

2C k	All unsecured creditors (including landlords) are estimated to receive £nil in relevant alternative
2C l	Landlords are estimated to receive £nil in the proposed restructuring plan
2C m	Landlords are almost certain (based on case law) to reject the plan
2C n	In this scenario, Landlords are no worse off under the relevant alternative and the Court will possibly sanction on the basis of (901G (3)). ("the no worse off test")

Total marks: (20 marks)

QUESTION 3

(a) What are the obligations placed on a Liquidator to investigate the affairs of a company in liquidation? (6 marks)

3A a	The Liquidator of an insolvent entity has a duty to investigate what assets there are and what recoveries can be made
3A b	The Liquidator therefore needs to carry out appropriate investigations to satisfy the specific duties and allay the legitimate concerns of creditors and other interested parties
3A c	The Liquidator also has a duty to report to the Secretary of State on the conduct of those formerly in control of the Company
3A d	The Liquidator should carry out investigations that are proportionate to the circumstances of each case
3A e	The Liquidator should report clearly on the steps taken in relation to investigations and the outcomes
3A f	Conduct reports and any new information that comes to light should be submitted in a timely manner
3A g	The Liquidator should locate the company's books and records and ensure they are secured and listed as appropriate
3A h	The Liquidator should invite creditors to provide information on any concerns regarding the way the company's business has been conducted, and on any potential recoveries for the estate
3A i	This should be done at any meeting of creditors and in the first communication to creditors
3A j	Should a creditors' committee be formed then a similar invitation should be extended to such committee upon or soon after the formation
3A k	The Liquidator should always have in mind the need to ascertain what assets can be realised
3A l	Enquiries should also encompass whether prior transactions by the company, or the conduct of any person involved with the company, could give rise to an action that could lead to a recovery
3A m	The Liquidator should make enquiries of the Directors and senior employees by issuing questionnaires and/or interviewing them
3A n	An initial assessment should be made as to whether any matters may lead to recoveries for the estate and what further investigations may be appropriate
3A o	The Liquidator should provide information to creditors, where possible, on the investigations and any action being taken (subject to privilege and confidentiality)
3A p	The Liquidator should document initial assessments, investigations made and conclusions
3A q	The Liquidator should prepare a conduct report based on information coming to light in the ordinary course of enquires

3A r	The conduct report is a statutory duty of a Liquidator and must be complied with regardless of the funds situation
3A s	The Liquidator should report any potential offences to the relevant authorities

i **For each of the five matters raised in the case manager's report identify, and if possible quantify, the recoveries that might be made for the benefit of creditors. In each case explain: (14 marks)**

(b)

- ii **what further enquiries and investigations should be made;**
- iii **what further information should be requested and from whom; and**
- iv **what potential recovery actions could be taken by you.**

3B aa	Write to the Director of the Company and
3B ab IC2 regarding the following:
3B ac	- seek a copy of the invoice relating to the Management Charge
3B ad	- request further details of what the charge relates to and what the company received for such significant amount
3B ae	Review the statutory books to see if there are any resolutions relating to the transaction
3B af	Review the Books and Records to see if any substantiation / support
3B ag	Speak with the former employee to see what further information they can provide in relation to the charge
3B ah	On the basis that IC2 does not have any employees or costs etc then it is an unusual transaction
3B ai	If the transaction is deemed to be non-commercial / overstated then there could be potential recoveries to pursue against the Director and/or IC2
	These could include:
3B ah2	- Transaction at an Undervalue
3B ai2	- Misfeasance
3B aj	- Simple reversal of the management charge and pursue a debt
3B ak	- If the charge is reversed, potentially wind up IC2 to allow a liquidator to investigate where the funds (£4.5m) have been utilised
3B al	On a practical note, write to Companies House to object against the striking off

(b) Rolls Royce

3B ba	Instruct an agent to advise on the value of the Motor Vehicle
3B bb	Write to the Directors to seek further information regarding the transaction and the reasoning for the transfer of the asset
3B bc	On the face of it, it would appear that the MV has been sold at an undervalue of c£75k (£100k market value, sold for £25k)

3B bd	Under S238/240, this has happened in the relevant time (ie 2 years from insolvency as it is to a connected party)
3B be	In addition, the related company appears to have repaid an interco debt with the transfer of the asset which may indicate a Preference
3B bf	Under S239/240, this has happened in the relevant time (ie 2 years from insolvency as it is to a connected party)
3B bg	Ultimately, would be seeking to recover c£100k for the claim subject to agents advice on valuation

(c) Sundry Debtor

3B ca	This appears to be a straightforward overdrawn Directors Loan Account
3B cb	Write to the Director to seek repayment of the debt
3B cc	... or an explanation of why it isn't repayable
3B cd	Ultimately, recoveries would depend on the financial situation of the Director
3B ce	Obtain any publicly available information on the financial status of the Director (eg Land Reg searches, Companies House searches etc)

(d) Transactions

3B da	Initial views could be that it is possible that Creditors have been misled as to the activities of the Company
3B db	Write to Creditors and invite them to provide copies of any marketing literature, correspondence etc
3B dc	Subject to further investigations, there is potentially a Fraudulent Trading action consideration if it appears that the business has been carried on with the intention to defraud creditors
3B de	Write to the Director to seek the reasoning for making significant payments to the four investments
3B df	Ultimately, an explanation of how all of the funds have been utilised or recoveries if available should be sought against each individual company
3B dg	Liaise with the Liquidator of CCCC Share trading to see what investigations they are performing and how the £5 million has been utilised
3B dh	Subject to review, consider removing current liquidator and appointing own choice to investigate
3B di	Consider the restoration of BBB Sports Betting Limited and appointing a liquidator to investigate where the funds have been utilised
3B dj	Write to AAAA and DDDD and seek repayment of the monies
3B dk	Consider placing AAAA and DDDD into liquidation (either as potential shareholder or as a creditor via a winding up order if not)

(e) Solicitors

3B ea	Write to the Solicitors to explain that you have been appointed
3B eb	Request full details of all matters that they have acted on for the Company including copy invoices for legal fees
3B ec	Request the Client Files in relation to matters dealt with by the Company as they are property of the Company
3B ed	These files may provide valuable information into the activities of the Company and the Directors

QUESTION 4

(a) Numbers – see spreadsheet (4 marks)

LLBT Engineering Limited					
Amounts owed by Customer					
Contracts to be continued					
	Contract number	Contract value	% done	% to do	Value
	2	1,000,000	80%	20%	200,000
	3	200,000	75%	25%	50,000
	5	100,000	75%	30%	30,000
					280,000
			Discount	25%	(70,000)
					210,000
			Variation		25000
					235,000
			VAT	20%	47,000
					282,000
			QS costs - share		(6,000)
		AMOUNT DUE			276,000

(b) EOS – see spreadsheet (25 marks)

LLBT Engineering Limited		
Estimated Outcome Statement		
	Assets subject to Fixed Charge	
	Freehold property	1,250,000
	Less costs of realisation	
	Administrators, agents and solicitors - 7.5%	(93,750)
	Available to Kingfisher Bank under Fixed Charge	1,156,250
	Owed to Kingfisher Bank	(870,000)
	Surplus (Shortfall) to Kingfisher Bank	286,250
	Assets subject to Floating Charge	
	Plant and machinery	273,500
	Stock	153,736
	Debtors and retentions	200,000
	HP surplus	56,255
	WIP - contracts novated	87,500
	WIP - customer	250,000
	Administrators Trading Surplus	100,000
	Fixed charge surplus	286,250
		1,407,241

Less: Costs of realisation		
Administrators Fees	(100,000)	
Agents Fees	(25,000)	
Legal Fees	(10,000)	
QS Fees	(10,000)	
	<u>(145,000)</u>	
Available to primary preferential creditors	1,262,241	
Employees	(234,400)	
Available to secondary preferential creditors	1,027,841	
HMRC	(150,000)	
Net Property	877,841	
Prescribed part		No PP
Available to unsecured creditors	<u>877,841</u>	
Unsecured creditors		
Trade creditors	1,952,058	
Employees	879,600	
Parent company	5,000,000	
BB Loan	18,963	
	<u>7,850,621</u>	
Estimated dividend available to unsecured creditors	11.18 p/£	

LLBT Engineering Limited		
Notes to the Estimated Outcome Statement		
Notes		
1 Plant and Machinery		
	Sales to date	223,500
	Future estimate	
	£200,000 @ 25%	50,000
		273,500
2 Stock		
	Initial stock list	1,274,872
	Provision for accuracy - 10%	(127,487)
		1,147,385
	ROT	(634,932)
		512,453
	New supplier - 50%	(256,226)
		256,226
	Auction - 10%	25,623

New supplier	
Amount at cost being bought	256,226
At 50p/£	128,113
Total	153,736
3 Motor Vehicles	
23 Vans @ £10,000	230,000
15 cars @ £15,000	225,000
	455,000
Agents Fees - 5%	(22,750)
	432,250
XXX Finance - primary indebtedness	(349,763)
Termination fee	(26,232)
	(375,995)
Surplus	56,255
4 Contracts novated to new supplier	

4 Contracts novated to new supplier					
	Cont val	% done	value	paid	WIP
Contract 1	500,000	25%	125,000	-75000	50,000
Contract 4	750,000	10%	75,000	0	75,000
Contract 6	400,000	15%	60,000	-10000	50,000
					175,000
To be paid by supplier - 50%					87,500
5 WIP paid by customer					
	Cont val	% done	value	paid	WIP
Contract 2	1,000,000	80%	800,000	-650000	150,000
Contract 3	200,000	75%	150,000	-100000	50,000
Contract 5	100,000	70%	70,000	-20000	50,000
					250,000

6 Administrators Trading Surplus	£
Sales to Customer	235,000
Less Costs	(170,000)
Add back depreciation cost	20,000
Add back QS costs - inc above and in calc of work done	15,000
Admin trading surplus	100,000
7 Kingfisher Bank	
Term Loan	742,500
Overdraft	127,500
Caught under charge	870,000
Assume BB Loan is unsecured	18,963

8 Employee claims		
Arrears of pay	Pref	u/s
73 members of staff @£800	58,400	
73 ees at £1,200		87,600
Holiday pay		
88 ees at £2,000	176,000	
	234,400	87,600
Redundancy pay		
88 ees @ £9000		792,000
Notice pay - assume nil claims due to high chance of moving and on better wages		
Total claims	234,400	879,600
9 HMRC		
PAYE	50,000	
VAT - 3 months	60,000	
provision for 2 months - 2/3 *£90k	40,000	
	150,000	

10 Trade creditors	
Aged creds list	2,713,976
Credit notes re ROT	(634,932)
VAT on ROT credit notes	(126,986)
New Trade creditors	1,952,058

- (c) Based on the estimated financial outcome, draft an outline of the section of your Proposals that deals with how it is proposed that the Administration will end, including any further requirements associated with the proposed exit route. (4 marks)**

4C a	Based on the EOS, it is estimated that secured creditors will be paid in full and there will be a distribution available to unsecured creditors
4C b	Para 83 of Schedule B1 applies where the administrator thinks that: a) Secured creditors will be paid in full and b) that a distribution will be made to unsecured creditors (which is not a prescribed part distribution)
	The following items should be covered within the proposals:
4C c	- confirmation that there are no secured creditors or the opinion that they will be paid in full
4C d	- an opinion provided that there will be a distribution available to unsecured creditors other than the prescribed part
4C e	- a notification saying that as soon as the Administrators are satisfied they have discharged their duties as administrators and the purpose has been achieved, they will deliver a notice of moving from administration to CVL to Reg of Cos
4C f	- notification that on registration of the notice, the administrators cease to act and the company be placed into liquidation
4C g	- The Liquidators shall be: a) A person nominated by the creditors of the company in the prescribed manner and within the prescribed period or b) The former administrator (if no one is nominated)
4C h	- A proposal that the current administrators be appointed as liquidators
4C i	- Explanation that creditors may nominate a different person as liquidator between them receiving the proposals and before the proposals being approved

- (d) On the assumption that you can achieve the statutory purpose in paragraph 3(1)(b), explain how you would seek authority for the payment of your remuneration. You are not required to explain the different bases on which the remuneration of an Administrator may be calculated. (4 marks)**

4D a	It is for the creditors' committee to approve the basis of remuneration under Rule 18.18
4D b	If the committee fails to determine the basis or no committee is appointed then it is for the creditors to determine
4D c by a decision procedure

4D d	In this question, it is estimated that no Para 52 1 B statement will be made as there are funds available for unsecured creditors and it is assumed that Para 3 1 B can be achieved
4D e	It is necessary to obtain a separate resolution in relation to remuneration from the body responsible for approving remuneration (and not caught with the approval of the proposals mechanism)
4D f	This is required by seeking a decision from creditors by either: <ul style="list-style-type: none"> - Decision by correspondence - Electronic voting - Virtual meeting - Physical meeting (if requested)
4D g	Full details of work performed and proposing to be undertaken should be provided (within the proposals)
4D h	Provide access to information on creditors rights in relation to remuneration as administrators (either on line or arrangements to send a hard copy)
4D i	The provisions of SIP 9 should be followed in relation to the principles and information provided

- (e) In a matter where you have concluded that the statutory purpose in paragraph 3(1)(c) only can be achieved, explain how the consideration of the Administrator's proposals and seeking authority for the payment of the Administrator's remuneration would be different. (3 marks)

	PROPOSALS
4E a	Para 49 of Sch B1 deals with the Administrator making a statement setting out the proposals for achieving the purpose of administration
4E b	Para 51 (1) of Sch B1 explains the A must seek a decision from the company's creditors as to whether they approve the proposals (as in part (d))
4E c	Para 52 (1) (c) says that Para 51 (1) shall not apply where Para 3 (1) (a) or (b) cannot be achieved
4E d	The Administrators Proposals are still made available to creditors
4E e	Creditors can request that a decision is sought from the unsecured creditors, re the approval of the Proposals, via a decision procedure
4E f whose debts amount to at least 10% (under Para 52 (2) of Sch B1
4E g	Under Rule 15.18 (2), this request must be delivered within 8 business days from delivery of proposals
4E h	Under R3.38 (4), if no request within the 8 days, proposals are deemed to be approved
	REMUNERATION
4E i	No different to part (d) – fixed by a decision procedure unless there is a committee

Total marks: (40 marks)

JOINT INSOLVENCY EXAMINATION BOARD
PERSONAL INSOLVENCY PAPER
EXAMINER'S REPORT AND MARK PLAN FOR THE NOVEMBER 2024 SITTING

Question 1

Question 1 tested the candidates' ability to identify a mixture of the legal and practical steps a Trustee can use to force the co-operation of a Bankrupt.

Requirements

- (a) Set out the powers that are given to a Trustee in Bankruptcy to enforce a bankrupt's co-operation. (3 marks)**

Most candidates were able to correctly identify at least two of the three main legislative powers available to a Trustee i.e. private examination (s.366 Insolvency Act), public examination (s.290) and suspension of discharge (s.279).

- (b) Explain how a Trustee in Bankruptcy can progress their administration of a bankruptcy estate in circumstances where the bankrupt has failed to surrender to the proceedings and has not cooperated with their Trustee. (17 marks)**

This question focused on the practical steps Trustees can take to progress the administration of a bankruptcy. Overall, the scores on this part were disappointing. There were plenty of opportunities for candidates to score well, if they considered practical steps, rather than spending too much time on legal concepts. A number of candidates seemed reluctant to attend the last known address of the Bankrupt, or send an agent to knock on the door or even speak to neighbours. Attending site allows a Trustee to obtain so much information. This information can be missed if Trustees remain stuck behind their desk. You can quickly establish, by attending the site, if a property is occupied, the condition of the property, whether there are any health and safety issues, whether there is a vehicle on the drive and potentially also see what information may be provided by the neighbours.

Various enquiries need to be made with a range of organisations. These may include but are not limited to HM Land Registry, HM Revenue & Customs, DVLA, Official Receiver, credit reference agencies, Companies House, Insolvency Register, banks, mortgagees, premium bonds, the benefits office, accountants or other professionals, as well as family members etc.

Information can also be obtained from creditors, whether that is the petitioning creditor, a secured creditor or an unsecured creditor. Parties who are owed money are usually willing to assist a Trustee with their enquiries, in the hope it will improve the prospects of a recovery.

If the Bankrupt's main residence is established, a Trustee can exercise their statutory powers and make various court applications which could include seeking to re-direct the Bankrupt's post to the Trustee's office, or Order to attend and search the Bankrupt's home and / or suspend the Bankrupt's automatic discharge.

Unfortunately, only a small number of candidates were able to identify the full range of practical steps available, leaving most candidates to miss out on easy marks.

Question 2

Requirements

- (a) **Calculate the amount that would be required to discharge the debts and expenses of the bankruptcy in full as at today's date. Clearly state any assumptions that you make. (5 marks)**

Most candidates scored well on this question. The candidates who scored most highly were those who addressed the more nuanced points such as VAT and the ISA banking fee.

Many candidates significantly underestimated the cost of petitioning for a bankruptcy order. Given that disbursements alone (comprising Court fee, Official Receiver's deposit, process server fees and the cost of arranging attendance at the bankruptcy petition hearing) will cost at least £2,000 it is not realistic to include provision for petition costs that are less than the cost of the disbursements that will be incurred.

- (b) **Set out the enquiries that you should make in relation to both the previous bankruptcy and the assets disclosed to you by Mrs Alfaro, and explain why these enquiries are necessary. (11 marks)**

The quality of candidates' answers to this part of the question varied. Most candidates picked up some marks but failed to identify all of the enquiries that should be made in relation to the first bankruptcy and the assets that had been disclosed. Simply stating 'make contact with the first trustee' will not score a mark. Candidates need to state what enquiries will be made of the first trustee when contacting them.

- (c) **Explain how the previous bankruptcy might impact upon Mrs Alfaro's ability to annul the second bankruptcy. (4 marks)**

This was the most poorly answered part of the question. Some candidates completely missed the point of the question and provided details of the process for annulling a bankruptcy rather than considering the impact of the first bankruptcy on the ability to annul the second. .

Question 3

This year's question 3 dealt with a "romance scam" and asked candidates to advise a victim debtor on what she might do to deal with the financial consequences of the scam.

Requirements

- (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)**

The first part of the question (and where the majority of the marks were available) being actions to be taken and enquiries that might be made by the candidates as an IP in the two weeks ahead of a meeting with the victim debtor.

On the whole, the majority of candidates provided thoughtful and considered responses to the question. However, worryingly, a significant number failed to consider the question properly, and trotted out "checklist" answers, such as client take-on procedures, AML checklists, and Insolvency Rules relating to how a statutory demand and bankruptcy petition should be presented. Furthermore, some candidates responded to the question by setting out the debtor's "options" when the question clearly did not ask for candidates to do this. In addition, many candidates set out detailed circumstances in which a mental health crisis moratorium might be applied for when the question merely mentioned historical depression by the debtor, with no information to support that she was suffering from the same issue when she approached the IP for advice. Consequently, those candidates scored few, if any, marks, as they had clearly failed to grasp the main thrust of the question.

However it was pleasing to see that many candidates gave some good practical answers and identified what further information might be required in circumstances where the debtor was a victim of potential fraud via a cryptocurrency scam, and had limited knowledge and understanding of the difficulties in which she found herself. Some candidates scored very well as a result of being able to offer sound practical advice, identifying next steps, and who to contact about the issues.

- (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 in order to assist their mother and highlight any risks for them were they to do so (4 marks)**

This part of the question required candidates to set out the potential advice that might be given by a third party IP to whom family members of the victim debtor had been referred, including whether to raise funds to assist her with her debts and the potential risks and consequences of doing so.

The majority of candidates were able to identify the risks and consequences of family members providing third party funds to deal with the debts, and also to give active consideration to simply allowing the bankruptcy petition to proceed in circumstances where the debtor had no assets and limited surplus income.

Question 4

Requirements

- (a) Outline how you will respond to the three voicemails which have been left for you. (8 marks)**

This part of the question was generally answered well, particularly in relation to the suggested responses to Karen's and Joe's voicemails. Most candidates recognised the impact the situation had on these individuals as employees, and relevant information that could be sought from Karen, as the office manager. The higher quality responses took a practical and sensible approach.

Occasionally candidates focussed too much on whether or not Karen should be paid for her assistance. The superior responses acknowledged that work done by Karen for the trustee in bankruptcy would be paid for by Mr Pitt, as the trustee, and payments due to Karen before the bankruptcy order itself would be claims within the bankruptcy estate.

The better responses to Theodore Woolfe's voicemail covered the need to clarify the aspects of the business that he was looking to acquire as well as how he calculated his offer.

- (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 bankruptcy. (12 marks)**

The higher scores were given to those candidates who were able to fully explain why the proposed actions were being taken, and why the matters they identified needed to be addressed in the context of this bankruptcy. Overall the standard of the responses to this question was good.

Candidates should ensure, when sitting the personal paper and dealing with the affairs of an individual, that references are not made to 'the company' or for example to corporation tax which is not relevant in the context of a sole trader.

- (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)**

This part of the question was generally well answered. The more impressive responses calculated the correct value for the deferred consideration, recognised that capital gains tax may be payable, and considered potential recoveries via an income payments order/agreement, and pursuing the company's debt and shareholding, with explanations for the values given (usually a nil value).

- (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)**

The brevity of many of the answers to this part of the question was often disappointing. Higher marks were given to candidates who not only identified the fact the transaction was likely to be challengeable as a transaction at an undervalue, but who also recognised the need for evidence of the property's value at the time of the transaction, any solicitor's files belonging to the bankrupt, and whether the new owner (thought to be the bankrupt's daughter) had carried out any improvements to the property post-acquisition to potentially increase the value, and what secured lending existed when the property was acquired by her.

Furthermore candidates who dealt with the need to instruct a solicitor to consider the merits of pursuing court action, in the event settlement negotiations failed, and whether ATE insurance, or the involvement of a litigation funder, demonstrated they had fully engaged with the question.

Candidates who saw fit to write brief suggestions such as “instruct a solicitor” and “issue proceedings”, with no further explanations, lost the opportunity to score marks here.

**Personal Insolvency England Exam
November 2024
Mark Plan**

Question 1

a) Powers given to a trustee in bankruptcy to enforce the bankrupt's co-operation (3 marks)

The Insolvency Act 1986 gives a Trustee in Bankruptcy a number of powers to enforce the co-operation of the bankrupt Section 366 IA86.

The Trustee has the power to apply to Court for an Order requiring the attendance at a private examination in order that he can be questioned in relation to his affairs.

Should the Bankrupt fail to attend without reasonable excuse, a warrant can be sought which, once issued, authorises the police to arrest the bankrupt for the purposes of bringing him before the court for questioning.

A Trustee could also make a request of the Official Receiver that a public examination is held (s290 IA86)

Power to apply to suspend the bankrupt's automatic discharge from bankruptcy (s279 IA86).

A bankrupt will receive their automatic discharge from bankruptcy one year after the making of the bankruptcy order. Where the bankrupt has failed to co-operate with the Official Receiver/ Trustee, an application can be made (to be heard prior to the date of discharge) for an Order which suspends his/ her discharge for a period of time or until the Trustee files a certificate with the Court confirming that the bankrupt has fully co-operated through the provision of certain specified information/ documentation.

b) How a trustee in bankruptcy can progress their administration of the bankruptcy in the absence of any co-operation from the bankrupt. (17 marks)

Bankrupt

Check that bankrupt is aware of the bankruptcy/ your appointment through visiting the address given for the bankrupt on the bankruptcy petition/ order or instructing a reputable enquiry agent to attend the property to hand deliver correspondence from you.

When attending the property (whether in person or via an enquiry agent) and any other properties known to be connected to the bankrupt, note whether there are any vehicles on the drive and whether the property appears to be occupied.

Carry out a search at the DVLA to establish whether the bankrupt is the registered keeper of the vehicle(s) identified as being at the property.

If the property appears to be empty, make enquiries of neighbours to try and establish whether the bankrupt still lives at the property. If not, do they have current address details or any other information that may assist?

Carry out an internet search / social media search (facebook, linkedin, Instagram) to see whether you can find out any information in relation to the bankrupt.

If the bankrupt's whereabouts are not known, instruct a reputable enquiry agent to carry out a trace report to see if the bankrupt's current address can be established.

Third Parties

Contact the petitioning creditor to find out what information they hold in relation to the bankrupt. Establish whether the statutory demand and bankruptcy petition were served personally. If they were, where was service effected. If not, how was substituted service effected? Email, via social media, post etc.

Contact the bankrupt's other creditors to ask whether they have any information that may assist. Certain creditor may have information in relation to bank accounts from which the bankrupt made payments. Request details of all such accounts together with details of any other known assets.

Contact any other relevant or identifiable third parties who may have had dealings with the bankrupt to ascertain whether they know of his/ her whereabouts and to provide any information that may assist you with your enquiries. Third parties could include solicitors, accountants, tax advisors, family members etc. If they fail to co-operate, the Trustee has the power to compel their co-operation through making an application pursuant to s366 IA86.

Make enquiries of the banks at which it is understood the bankrupt held an account. Ask that details of any accounts be provided, together with bank statements for the last five years.

Review the bank statements to see whether there are any payments that require explanation. Make enquiries of the recipients to establish what the payments relate to.

Do any of the payments indicate the ownership of other assets by the bankrupt i.e. vehicles, overseas property, policies.

Do the statements show what appear to be salary payments going into the account? If they do, can the bankrupt's current or former employer be identified and contacted?

If the statement shows payments being received from the DWP or other government agencies, enquiries could be made to establish what payments the bankrupt is in receipt of and what his/ her current address is.

If HMRC is a creditor, make enquiries to establish how the debt arose and request copies of all tax returns submitted by the bankrupt over the last 5 years.

If the tax returns were submitted by a firm of accountants on behalf of the bankrupt, notify the accountants of your appointment and request delivery up of their files.

Make enquiries of the Official Receiver to establish whether they are taking any action. If a public examination of the bankrupt has been sought by the OR, the Trustee is entitled to attend the public examination and ask questions of the bankrupt.

Searches

Carry out a search at Companies House to see whether the bankrupt is, or has been, a director of any companies. If he has, does he also have shares in the company? If all correspondence to associated residential addresses goes unanswered, consider writing to the bankrupt c/o the registered office of any companies of which the bankrupt is a director.

Search the individual insolvency register to see whether the bankrupt is subject to an IVA or DRO.

Carry out a credit reference agency search to see whether this identifies any other creditors.

Property/ Assets

Carry out a PN1 search at the Land Registry to establish whether there is any property registered in the bankrupt's name. If property is registered in the bankrupt's name:

- i) obtain official copies of the title to check whether a bankruptcy notice has been registered (solely owned). If the property is jointly owned, apply for a restriction;
- ii) check whether any charges are registered against the title. If there are, obtain a redemption statement for each charge;
- iii) obtain an initial desktop/ drive by valuation to establish whether it appears that there is equity in the property.
- iv) should the bankrupt (and any co-owners) continue to fail to co-operate, and there is sufficient equity in the property, the Trustee can apply to court for an order for possession and sale of the property.

Carry out a land registry search in respect of the property address given on the bankruptcy petition/ order. If the bankrupt is not the registered owner, make enquiries of the registered owner to find out what information they can provide in relation to the bankrupt.

Contact NS&I to check whether the bankrupt holds any premium bonds. If he/s he does, the bonds are an asset of the estate with any prize money payable to the trustee rather than the bankrupt.

Potential court applications

If the Trustee is aware of the bankrupt's current residential address and the circumstances of the case warrant such an application being made, an application can be made pursuant to s371 IA 1986 for an Order re-directing the bankrupt's post to the Trustee's office for a period of time.

An application pursuant to s365 IA 86 could also be made to search the bankrupt's premises and seize any books, papers or records relating to the bankrupt's affairs.

Such Orders are not routinely made by the Court and the circumstances of the case would have to justify the costs of the application being incurred and warrant an order being made.

If there is ongoing non-co-operation consideration should be given to applying to court for an order suspending the bankrupt's automatic discharge from bankruptcy. This will ensure that any potential assets which have not yet been identified are lost i.e. right to pursue an IPO/IPA and also ability to claim after acquired property.

Total marks: (20 marks)

Question 2

(a) Amount required to discharge the bankruptcy liabilities. (5 marks)

Costs

Official Receiver's general fee	£6,000
Official Receiver's administrative fee	£2,775
Petition costs	£8,400 inclusive of vat and disbursements*)
Trustee's fees	£7,000 (been in office for 27 days) – (£5,833 plus vat*)
Trustee's disbursements	£500 (insurance, bonding, statutory advertisement)
ISA Quarterly fee	0.00**

Realisations

Petition deposit	£1,500
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Creditors

One known creditor	£25,000 (assume no further creditors)
Statutory interest	£147.96 (27 days at £5.48 per day)

Total amount required - £48,322.96

Credit will be given where any reasonable assumptions have been made in relation petition costs, trustee's fees and disbursements.

*Assumed that VAT is irrecoverable on the basis that Mrs Alfaro's circumstances do not suggest that she would have been VAT registered

** Quarterly fee is payable on 1 October and 1 January. Here, the bankruptcy order was made after 1 October. Calculation is at today's date, so the fee for 1 January will not have been incurred.

(b) Further enquiries that should be made in relation to the earlier bankruptcy and the assets disclosed by Mrs Alfaro. (11 marks)

As set out below, the key issues that need to be determined are the status of the first bankruptcy (i.e. creditor position and whether discharge received) and which estate the assets belong to.

Establish whether Mrs Alfaro has received her discharge from bankruptcy.

If she has, was the discharge subject to any conditions pursuant to section 280(2) of the Act? If those conditions have not been met as at the date of the second bankruptcy, the first Trustee is entitled to retain any payments made pursuant to those conditions that have not yet been distributed

If not, was the Trustee served with notice of the presentation of the second bankruptcy petition? If he/ she was, pursuant to section 334 (2) of the Insolvency Act 1986 ("**Act**") any dispositions by him/ her to which section 334(3) of the Act apply, if made after notice was given, is void except to the extent that it was made with the consent of the court or subsequently ratified by the Court

The dispositions to which 334(2) of the Act applies are:-

1. Any property vested in the existing Trustee under Section 307(3) After acquired property.
2. Any money paid to the existing Trustee pursuant to an IPO under Section 310; and
3. Any property or money which is, or in the hands of the existing Trustee which represents that proceeds of sale or application of property to which 1 or 2 above applies.

Pursuant to Section 335 of the Act, with effect from the making of the bankruptcy order in the second bankruptcy, anything to which Section 334(3) applies, which is comprised in the first bankruptcy is to be treated as comprised in the bankrupt's estate in the second bankruptcy.

However, anything that is vested in the second estate by virtue of Section 335(1) or (2) is comprised subject to a first charge in favour of the existing trustee in respect of any expenses incurred in relation thereto. (see Rule 10.153, the charge applies irrespective of whether the assets are under the custody and control of the first or second trustee)

All other assets that are vested in the first estate remain vested and are not impacted by the second bankruptcy.

Enquiries should be made of the first trustee to establish the status of the bankruptcy i.e. has it been annulled? Have all liabilities been discharged? If they have, does bankrupt intend seeking annulment?

Pursuant to Rule 10.152 the existing trustee must, if requested by the later trustee deliver up to the later trustee as soon as reasonably practicable all property and money in the existing trustee's control.

IPA/O

The first Trustee should be asked to confirm whether an IPA/O has been put in place.

If it has, enquiries should be made to establish when it was put in place, how long it is due to last, how much is paid each month and whether the amount paid accords with Mrs Alfaro's current disclosed income and outgoings.

Are there any arrears?

If not, did Mrs Alfaro comply with all of her obligations regarding disclosure of income etc to the first trustee.

If she did, the IPO/A effectively transfers to the second bankruptcy.

A bankrupt does not avoid their obligations under an IPO/A if they are made bankrupt for a second time (see *Azuonye v Kent* [2019]).

It remains possible to vary the terms of the IPO/A from the first bankruptcy.

Assets

For each of the assets, the Trustee should be asked to confirm whether he was aware of the asset, had taken any steps to realise that assets and has any further information that may assist.

Creditors

The Trustee should be asked to provide details of the creditors of the first bankruptcy.

Pursuant to Section 335(5) of the Act, any creditors of the earlier bankruptcy are not entitled to prove in the second bankruptcy in relation to any sums that are due to them.

Jointly owned property

Check whether this is/ was an asset in the first bankruptcy. Official copies should be obtained which will confirm the date of purchase.

If it is an assets of the first bankruptcy, assuming it is the bankrupt's sole or principal residence, the Trustee still has a year in which to realise their interest.

If the first trustee realised their interest prior to the second bankruptcy order being made, check the basis on which it was realised. Does the bankrupt actually have an interest in the property? If for example the co-owner purchased the Trustees' beneficial interest (with a Deed of Release and Assignment entered into in their favour) the bankrupt may not in fact have much, if any, beneficial interest in the property.

An interest may exist if the bankrupt has for example made any lump sum payments towards the mortgage, funded improvements etc although given the timings of the bankruptcy orders this seems unlikely.

If the property was acquired after 1 November 2023 and on the assumption that Mrs Alfaro has received her discharge from the first bankruptcy such that the property cannot be claimed by the first trustee as after acquired property, the property will be an asset of the second bankruptcy estate.

Inheritance

It is not clear when the inheritance was actually received. However, assuming that Mrs Alfaro was a beneficiary under her grandmother's will, then the right to receive the inheritance will have vested in the trustee of the first bankruptcy.

The fact that the bankrupt still has this money could suggest that it was not claimed by the first Trustee.

Check whether the inheritance was disclosed to the first Trustee and if not, whether it is required to discharge any outstanding liabilities of the first bankruptcy.

Rolex

When was the Rolex acquired by the bankrupt. Does it form an asset of the first estate or could it be claimed as after acquired property?

Whilst a watch could be classed as exempt pursuant to Section 283(2) as being necessary for the bankrupt's reasonable domestic needs, the fact that the watch is a Rolex means that it is likely to be of significant value and should be claimed for the estate as an item of excess value pursuant to section 308 IA86.

Require the bankrupt to deliver up the watch to you for safekeeping whilst enquiries are made of the Trustee and the bankrupt. Ensure that the watch is stored securely and obtain valuations. Consider whether in the circumstances (sentimental value?) the watch should be held and not sold pending the outcome of your enquiries regarding the asset and creditor position in the earlier bankruptcy.

Life insurance policy

Notify policy provider of the making of the bankruptcy order and your appointment as Trustee.

Ask for confirmation of whether the policy has a surrender value and if it does, the requirements for surrendering the policy.

Ask for confirmation of the date on which the policy was taken out in order to establish whether it is an asset of the first bankruptcy estate or the second estate.

(c) Ability to annul the second bankruptcy. (4 marks)

The enquiries set out above in relation to the assets will determine whether they are assets that are available to you as Trustee to realise for the benefit of creditors.

In relation to the creditor position, if the bankrupt has not received their discharge from the first bankruptcy the earlier Trustee is entitled to prove in the later bankruptcy in respect of the unsatisfied balance of the debts provable in the first bankruptcy, any interest that is payable on that balance and any unpaid expenses of the earlier bankruptcy.

The proof of the earlier Trustee ranks in priority after all of the debts provable in the later bankruptcy and after interest has been paid on those debts.

You would need to check with the first Trustee what the current status of the first bankruptcy is. If Mrs Alfaro has not been discharged, are there any assets that remain to be realised and is it likely that there will be a shortfall in respect of which a proof of debt will be lodged? If there is, then sufficient funds would be required to discharge the claim of the first trustee as well as any creditors proving in the second bankruptcy.

If annulment is pursued, it is likely that the court would require both Trustees to report to the court on the status of the bankruptcy.

If Mrs Alfaro decides to seek annulment through proposing an IVA and she has not been discharged from her first bankruptcy, the IVA must specifically deal with the position of the first bankruptcy and any undistributed income or after acquired property in the hands of the second trustee.

Total marks: (20 marks)

Question 3

(a) The actions / enquiries you will make within the next 14 days. (16 marks)

Obtain a credit report for Ms Seymour to check the timings and amounts of the borrowing and that you have details of all creditors

Review of correspondence received from Ms Seymour.

Does it appear that all of her liabilities stem from loans taken out to make payment to Barry or are there other liabilities?

Review of Ms Seymour's bank statements to calculate how much she transferred to Barry from her savings account. It may be possible to claim some or all of this money back from the bank.

Check Ms Seymour's bank statements to establish whether the savings account is empty. Ask Ms Seymour to confirm with the bank where the payments were made to (i.e. account names, numbers).

The payments to the cryptocurrency firm should be reviewed and enquiries made to establish in whose name the wallets were held and whether any of Ms Seymour's funds remain held.

Notify the petitioning creditor/ their solicitors to advise them of your instruction, check whether there are any supporting creditors and to seek confirmation of the date and time of the bankruptcy petition hearing and to request an adjournment of the first hearing to allow time to properly investigate Ms Seymour's affairs (assuming that a bankruptcy order has not already been made).

If the petitioning creditor will not agree to adjourn the first hearing, Ms Seymour could consider applying for a breathing space moratorium in order to give her time to try and understand the total extent of her indebtedness and whether there is any prospect of some or all of the payments that have been made being refunded by the bank.

Did the bankruptcy proceedings coincide with her treatment for depression? If they did, there may be grounds for Ms Seymour to seek to have the petition dismissed

Check whether there are any internet reports in relation to Barry. Has he been charged with any offences and/ or been imprisoned?

If Barry has been found guilty of fraud, this may assist in seeking recovery of funds paid / writing off of loans taken out if it can be shown that Ms Seymour was the victim of a convicted fraudster.

If not, enquiries could be made to try and establish his true identity/ whereabouts. Whilst recovery of funds might be unlikely, consideration should be given to whether any of the funds could be clawed back as a transaction at undervalue.

Actions you would suggest Ms Seymour takes

Ms Seymour should report Barry's actions to the police (and obtain crime reference number) and also Action Fraud.

Should open up to friends and family who will be able to offer her support.

Make contact with the investigatory journalist team/ other victims. They may have evidence that could assist. If reports have already been made to the police, Mrs Seymour should find out if a particular officer/ force is already investigating.

Review of the creditors to see whether Barry has obtained any credit in her name following the release of her bank details to him.

Ms Seymour should ensure that her bank is aware of the recent events and that a new account is opened which cannot be accessed by Barry. Her old account should be frozen to ensure that Barry cannot access the account. Ms Seymour should also ensure that all of her internet banking passwords are changed / internet banking is disabled to ensure that Barry cannot access her accounts.

Ms Seymour should review her statements / liaise with the Bank to find out the details of the bank accounts to which payments were made.

Ms Seymour should collate all documentation / correspondence received from Barry and take screenshots of any text messages etc.

(b) Advice that Mr Tortuga should give to the children regarding whether it would be appropriate to raise funds to assist their mother. (4 marks)

The implications for Ms Seymour if a bankruptcy order is made need to be understood.

Does she have surplus income over and above her reasonable domestic needs that could be sought by a trustee through a IPO/ IPA for the next three years?

Does Ms Seymour own the house in which she lives? If she does, the Trustee will be obliged to take steps to realise the property within 3 years of the making of the bankruptcy order.

If Ms Seymour does not have any surplus income, does not own the home in which she lives and does not have any other assets that a trustee would look to realise if she was made bankrupt, query whether there is any benefit to her children trying to raise the money to pay off the liabilities.

The children also need to understand the total extent of Ms Seymour's liabilities and whether there are any other creditors who may make a claim. Paying the debt due to the petitioning creditor may cause other creditors to take carriage and may not enable Ms Seymour to avoid bankruptcy.

The children do however need to be made aware that if they do decide to discharge Ms Seymour's liabilities, they should do so prior to a bankruptcy order being made as the amount that will be required will increase considerably after the making of a bankruptcy order (OR fees, Trustee's fees, statutory interest etc).

It could be possible to claim some of the payments back from Ms Seymour's bank and/ or certain of the banks/ credit card companies that loaned money may agree to waive some or all of the sums that were advanced. It might therefore be advisable to make contact in order to understand their position and the total extent of creditor claims/ potential recoveries.

If the children do decide to raise the funds, they need to ensure that they can afford the repayments if funds are borrowed and also be aware of the risk to their credit score / potential for creditor to take action if they fall behind. If the lender requires security the children need to be aware that they could lose their home if they do not maintain the repayments.

Total marks: (20 marks)

Question 4

(a) (8 marks)

Karen

Return Karen's call on mobile and introduce self. Confirm time of the meeting.

Ask her to bring the cash float and petty cash to the meeting.

Explain that the Trustee will be able to pay Karen for the work that she does on the Trustee's behalf in attending this meeting and also preparing information. However, any sums that she is due to be paid until this point will be a claim in the bankruptcy.

Explain that the Trustee's team will be able to assist with the submission of forms to the Redundancy Payments Office to make these claims. This will be able to be expedited now that a bankruptcy order has been made. Explain that you will be able to discuss this in more detail when you meet.

Clarify whether she does the payroll or whether this has been outsourced.

There will be a lot of information which you require from her, but the most urgent things are:-

- i) A schedule of employees showing their name, date of birth, length of service and sums due in respect of arrears of wages and holiday pay;
- ii) A copy of the employees contracts if available to her;
- iii) Where the customer details are held, including master keys and the security arrangements for these;
- iv) Who controls the businesses social media and online presence and details of log ins/passwords for these accounts as well as for any online banking/ business accounts.
- v) Details of the phone numbers used by the business;
- vi) Details of outstanding invoices / sums due to the business by customers, and the extent to which the invoice discounting facility has been drawn down;
- vii) The whereabouts of the keys for the shop/workshop;
- viii) The whereabouts of the vans and the keys for these;
- ix) Details of any insurance policies that are in place for the premises and van
- x) Any alarm security details (to include details of codes, location of keys and how to operate the alarm);
- xi) Details of trade creditors, including sums owed and contact details
- xii) Details of utility suppliers to the business premises;

Details of assets and (if known) any outstanding finance in respect of those assets.

Interested Party

Return Theodore Woolf's call

Confirm that the Trustee has been appointed and that future discussion regarding the purchase of the business should come through you and your office as all assets have now vested in the Trustee.

Explain that you are making an immediate assessment of the position but that you appreciate the urgency and will revert to him soon.

Clarify i) in more detail the aspects of the business that he would want to acquire to help you establish what the Trustee would need to be able to sell and would therefore require access to and ii) how he calculated his offer of £20,000.

Explain that the Trustee will be obtaining his own valuation of the assets and taking the advice of his agent in relation to the likely realisable value of the assets

Employee

Return Joe's call. Explain that the Trustee has been appointed and that you are making an immediate assessment of the situation. As for Karen explain that now that a bankruptcy order has been made it will be possible to process claims on behalf of the employees.

Once you have the payroll details you will get a colleague to discuss this with him in more detail. However, he is entitled to claim for up to 8 weeks of unpaid wages through the RPS together with his entitlement to accrued annual leave and statutory notice pay. Confirm that the Trustee can assist him with the claim if needed. If not, the information that he will require to proceed with a claim, including the customer number will follow.

Explain that if the Trustee needs them to do any work, they will pay for this but you will confirm if this is required after your first meeting.

Establish whether the van is parked safely and that Joe has the keys. Explain that this is an asset in the bankruptcy and that you will make arrangements for it to be uplifted once you have established how it can be sold. In the meantime (and whilst the insurance position is being determined) Joe should not drive the van.

(b) Other actions in next 7 days. (12 marks)

Appointment date Tuesday 12 November 2024

Review Mr Hoods application to the adjudicator to see what information he provided and what assets were disclosed.

Arrange for a case bank account to be opened.

Arrange for petty cash/cash float to be banked in case account.

Arrange for Open cover insurance and subsequently complete full details for insurer. Ensure that an appropriate level of bonding is in place.

Obtain the physical books and records for Hoods including accounting information.

Notify suppliers and utility providers of the bankruptcy order. Establish whether any suppliers are owed money and if they are, whether a ROT claim will be asserted.

Secure all assets including premises (through changing the locks), vehicles, customer listing and proprietary information including master keys and security information.

Put a notice in the window of the business premises which confirms your appointment and provides your contact details so that any customers or other third parties can make contact with you if they have keys at the premises etc.

Contact the customers whose master keys are held to advise them that Hoods can no longer act as key holder and that they should make arrangements to collect their keys as soon as possible.

Prepare details of what would be available to sell, e.g. shop premises, equipment, vehicles customer listing, the business name, phone numbers, website and social media presence. Consider the extent to which contracts with customers could be novated/transferred. With assistance from Samuel establish parties other than Theodore Woolf who may be interested in acquiring the business/assets. Consider advertising in relevant trade publications.

Contact the parties who may have an interest in acquiring the business, provide details of what is available for sale establish the extent of any interest and invite offers. Consider a deadline for offers if more than one interested party.

Write to employees to confirm that they have been made redundant. Check payroll records to establish how much is due to each employee. Arrange to assist them to submit claims for the arrears of wages, holiday pay, PIL and Redundancy pay due to them.

Ask employees to return vehicles and fuel cards.

Make arrangements to pay employees for any work done on behalf of the Trustee;

Arrange for valuation of premises, and items at the premises being stock, plant and equipment and also the vans. Ask valuer to ensure that HPI check is carried out.

Write to Green Turtle Limited to formally request repayment of the loan

Consider steps to be taken in relation to 50% shareholding in Green Turtle Limited. Request up to date management and statutory accounts. Establish whether there is likely to be any value in the shareholding and whether it is likely to be in a position to repay the £150,000 due to the locksmith business.

Check Companies House records to determine whether Samuel is a director of any company. If he is, advise him that he can no longer continue to act as director while an undischarged bankrupt

Contact Invoice Discounter to confirm sums due under their facility and when they expect to recover the sums due to them. Ask them to keep you advised regarding their progress and confirm when they have collected the sums due to them and the ledger can be passed to the Trustee or alternatively if they expect to have to make a claim in the bankruptcy.

Confirm bank balance/overdraft and that all card receipts prior to the cessation of trade have been credited to the account. Ensure that the account is frozen so that no further payments can be made from it.

Notify creditors of Trustee's appointment.

Obtain information to submit final Vat returns and submit VAT 769.

In due course interview Samuel, complete questionnaire and establish whether there are any other assets or personal debts. Assess his income and expenditure to establish whether there are any funds available over and above his reasonable domestic needs that could be made available through an IPA/ IPO.

Carry out a PN1 search in Samuel's name to see if he owns any property. If he does, obtain official copies for the title. If the property is solely owned, check that notice of the bankruptcy has been entered against the title. If jointly owned, apply to the land registry to register a restriction. If any

charges are registered against the title, contact the charge holder and request a redemption statement.

(c) Estimated Outcome Statement (14 marks)

The bankruptcy of Samuel Hood					
Estimated Outcome Statement as at 12 November 2024				Estimated to realise	Note
		£		£	
Property					
Premises of Hoods at High Street, Baltra - shop and work shop					
Valuation		100,000			1
Due to secured lender - Albatross Bank	-	25,500			
Costs of realisation	-	10,000			2
				64,500	
Business Assets					
Sale of Goodwill				38,800	3
Workshop equipment				9,000	4
Vans *3				27,000	4
Debtors Ledger		232,000			
Sums due to Hawk Limited	-	137,000			
				95,000	5
Loan due by Green Turtle Limited		150,000		-	6
Petty cash/float				524	
50% shareholding in Green Turtle Limited				-	7
Claim against daughter re property				162,500	8
Contributions - IPA/IPO				-	9
Total Assets				347,924	
Costs of Administration					
Legal Fees		25,000			10
Trustee's Fees		50,000			11
Disbursements		1,000			12
Official Receiver's administration fee (Debtor applicatic		1,990			13
Official Receiver's general fee		6,000			13
				- 83,990	
Capital Gains Tax Liability				- 18,480	14
Available for preferential creditors				245,454	
Preferential creditors					
Arrears of Wages		4,800			15
Holiday Pay		3,715			16
VAT		45,000			
PAYE/NIC		4,025			
				57,540	
Available for unsecured creditors				187,914	
Unsecured creditors					
Arrears of wages - unsecured		10,681			
PILON		3,096			
Redundancy		30,518			
ER's NIC		3,570			
Pension		500			
Trade suppliers		15,000			
Rates		5,000			
Fuel cards		1,250			
Personal Guarantees		200,000			
				269,615	
Estimated Dividend to the unsecured creditors				0.70	

Preferential creditors will be paid in full and unsecured creditors would receive a dividend of 70p in the £1

Notes

- 1 Assume that the Trustee is prepared to have a prolonged marketing period to secure the development value and the holding costs of the property are not prohibitive
- 2 Costs include marketing, conveyancing, insurance and security during the marketing period – estimate
- 3 £20,000 already received. Assume that deferred consideration of $(£1,040,000 - £100,000) \times 2\%$ - £18,800 is also collected in monthly instalments of £1,566. Total of £38,800. This assumes turnover is not reduced by move.
- 4 Assume that value is recovered less 10% cost of realisation
- 5 £95,000 remains on the ledger of which c£22,000 is >90 days old. It would likely be more effective for Hawk Factors to collect for 20%.
Assume 60% of £95,000 is recovered of which 80% is paid to the estate = £45,600
6. We don't have enough information to assess whether Green Turtle will be able to repay this loan, assume value is nil.
- 7 We don't have enough information to assess the value of the shareholding in Green Turtle, assumed that value is nil.
8. The transfer of Samuel's home to his daughter could be subject to challenge as a transaction at undervalue. Assuming that property prices are flat, this is $(450,000 - 125,000/2) = £162,500$. Costs of a legal action for recovery and reduction of the transaction and then division and sale/eviction could be say £25,000
9. The debtor's income and expenditure will have to be assessed and an IPA/IPO considered. Assumed nil at present.
10. Assume legal advice to challenge the sale of the property to Samuel's daughter and recover this for the estate is required. Net figure, VAT is recovered
11. Estimated net figure, VAT will be recoverable
12. Includes bonding etc
13. Fixed fee payable from realisations
14. Capital Gains Tax will need to be paid on any gain on the sale of the business premises, goodwill, equipment and vehicles. It is only likely that there will be a gain on the property particularly because it has been owned by Samuel for so long
In England the rates in 2024/25 are 24% and the annual exemption is £3,000. Assuming that the value of the property was say £20,000 40 years ago it would be prudent to provide for 24% of $£100,000 - £20,000 = £80,000 - £3,000 = £77,000 \times 24\% = £18,480$
- 15 Arrears of wages limited to £800 per person - $6 \times £800$

(d)

From the information we have it appears that the transfer of the property to his daughter could be subject to challenge as a transaction at undervalue (s339 IA86).

Establish whether the transaction was at an undervalue through: (6 marks)

- Making enquiries to establish whether any major building work / redevelopment of the property has taken place which would materially impact on the value.
- Obtain historical official copies of the register to check whether the property was transferred subject to a charge which has subsequently been discharged. If the property was transferred subject to a charge, find out how much was outstanding and who subsequently discharged the amount that was outstanding.
- Obtaining a retrospective RICS valuation at date of transfer.
- Seek delivery up of the files of the solicitors who were instructed on the transfer of the property.

If it does appear that the property was transferred at less than full market value:

- Confirm that property was owned 50:50 or if not, what was Samuel's share?

- Assuming no material change in property values since 2023 and based on the surveyor's valuation, the property worth £450,000 was sold for £125,000 therefore at undervalue of £325,000. Samuel's 50% share of was sold at an undervalue of £162,500.

Establish what happened to the proceeds from the sale. Are any funds still left which could be recovered for the estate?

Consider whether action is necessary

It is also important to note that if there is no call under the personal guarantees then Samuel's unsecured creditors are currently understood to be in the region of £69k. The outcome of the Green Turtle Limited Residential development is very important here. If it is able to repay the £150,000 that is due to Hoods, or the debts which have been guaranteed are not called upon, action in respect of the transfer of the property may not be necessary. As it is likely to be costly and risky to issue proceedings challenging the transfer of the property, the likelihood of the liabilities of the bankruptcy estate being discharged from other realisations should be established.

If action is necessary

Arrange a meeting with Mr Hood and his daughter to discuss the transfer and whether a settlement can be reached.

If no settlement can be reached and action is necessary appoint solicitors. Request an estimate of costs and advice on prospects of success.

Obtain indicative quotes for ATE insurance

Consider whether better outcome could be achieved by sale to specialist insolvency claims purchaser.

Ensure that any decision regarding how best to proceed with the claim (and the rationale for that decision) is fully documented.

Total marks: (40 marks)