

# JOINT INSOLVENCY EXAMINATION BOARD

*Joint  
Insolvency  
Examination  
Board*

Joint Insolvency Examination (Scotland)

Wednesday 12 December 2007

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## PERSONAL INSOLVENCY (3 hours)

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ANSWER ALL FOUR QUESTIONS

QUESTIONS 1 AND 2 CARRY TWENTY MARKS EACH  
QUESTIONS 3 AND 4 CARRY THIRTY MARKS EACH

SUBMIT ALL WORKINGS

**The Examiner will take account of the way material is presented. Candidates should answer the questions set – marks will not be awarded for extraneous material.**

**Note:** References to “the Act” are to the Bankruptcy (Scotland) Act 1985, as amended, including amendments that took effect up to and including 1 April 2007.

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

1. Tom Stewart signed a trust deed in favour of your principal on 16 June 2006. The following proposals were offered to creditors and the trust deed became protected:

- The trust deed will last 36 months.
- The debtor will pay a monthly contribution of £500 throughout the trust deed period, commencing in July 2006.
- The debtor's share of the potential equity in the matrimonial home in Plockton will be realised and the net equity paid into the trust deed account.
- The debtor will be permitted to retain his Ford Fiesta, valued at £2,000, in order to travel to work such that contributions may be paid. If contributions are not paid in accordance with the terms of the trust deed, the vehicle will be sold.
- Creditors can anticipate a dividend of approximately 50p in the £, subject to realisation of assets and the costs of the trust deed process.
- Should the debtor default on his obligations, the trustee will petition for sequestration.
- If the debtor dies during the course of the trust deed, the terms will be binding upon his executors.

The debtor's estimated statement of affairs in June 2006 showed that the dwellinghouse in Plockton valued at £160,000 by an independent valuer. Secured borrowings were in the region of £120,000. Title to the property has been held equally by the debtor and his wife for many years.

Although contributions have been paid timeously, the equity in the dwellinghouse has not been addressed. Your enquiries show that the debtor's spouse refused to agree to refinance the property because she said that she did not know until Christmas 2006 that her husband had signed a trust deed and disagreed with his action.

The debtor died on 22 July 2007, the day after his fifty-eighth birthday. His spouse and their only son are the executors and the debtor's Will provided that his whole estate passed to Mrs Stewart.

You are advised that the property in Plockton is now worth at least £200,000 and the outstanding mortgage remains in the region of £120,000.

It is brought to your attention that the debtor had a term life assurance policy for £100,000 written in trust for his only grandchild. The policy has been in existence for 16 years at an annual premium of £75 but the trust document is not available.

The debtor held shares in Unilever plc and had a personal pension policy. The shares have a current market value of £18,000 although the existence of such shares was not disclosed until you met Mrs Stewart to review matters. Under the terms of the pension policy, £40,000 is payable on death.

Creditors' claims, which are all unsecured, total £76,000.

The debtor's funeral expenses were £2,500.

No payments have been made from the trust deed estate and the trustee's unpaid fees total £5,000.

A meeting will be held with the executors on 19 December 2007 in order to discuss the course of action that the trustee proposes to adopt.

## Requirements

- (a) Prepare the initial statement of affairs and likely financial outcome that reflected the position in June 2006. (5 marks)
- (b) Prepare a memorandum setting out the issues that will require to be discussed at the meeting and note how you propose dealing with them. Include calculations to demonstrate the position. (15 marks)

(20 marks)

2. The Bankruptcy (Scotland) Act 1985 states the numerous duties, requirements and powers of a commissioner elected to act in a sequestration. Some are mandatory, others discretionary.

## Requirements

- (a) Briefly explain the process of election of commissioners and detail who may and may not act as a commissioner. (4 marks)
- (b) Schedule the principal duties, requirements and powers of a commissioner. (16 marks)

(20 marks)

3. You were appointed interim trustee over the sequestrated estate of Dinah Drudge trading as Cleaning 'n Chores on 15 October 2007 and subsequently elected permanent trustee at the statutory meeting of creditors on 14 November 2007. The act and warrant issued by Wick sheriff court is dated 22 November 2007.

When you first met Dinah Drudge she advised that Cleaning 'n Chores provided domestic, business and industrial cleaning services and was the largest such business in the Wick and surrounding area. Upon review of the financial information provided, you decided to continue trading operations with a view to selling the business as a going concern.

## Requirements

- (a) Your principal asks you to prepare draft sales particulars together with a letter of confidentiality. Detail the items which might be contained in the sales particulars and the key issues that a letter of confidentiality will include. (20 marks)

There are several interested parties and offers are submitted on the closing date. To your disappointment, all offers are substantially less than the break-up valuation attributed to the assets by your agent. Following discussions with your agent, it is recommended that you consider the highest offer and such party is granted preferred bidder status.

## Requirements

- (b) What steps should be taken by the trustee in order to validate the decision to sell, and in anticipation of the day of handover? (10 marks)

(30 marks)

4. On 19 October 2005 your principal was appointed interim trustee of Madame Genevieve Deauville who sold perfume and related products as Scent from France. He was subsequently elected permanent trustee and such election was ratified by issue of an act and warrant interlocutor from Glasgow sheriff court on 1 December 2005. The date of sequestration is 1 October 2005.

It is anticipated that a dividend will be paid to creditors and because the sequestration process is moving toward completion, your principal has asked you to prepare a draft claims adjudication. A summary of claims received to date is as follows:

- (1) Arrears of payroll deductions, which accrued evenly over the period, are:

	<b>PAYE</b>	<b>NIC</b>
5 August 2005 to 19 October 2005	£30,000	£22,500

- (2) VAT returns were prepared and submitted to H M Revenue & Customs shortly after your principal's appointment and reflect the following sums:

	<b>£</b>
Quarter ended 31 December 2004	8,500
Quarter ended 31 March 2005	(10,000)
Quarter ended 30 June 2005	6,000
Quarter ended 30 September 2005	7,000
Final period ended 19 October 2005	3,800
	<u>£15,300</u>

- (3) A French company supplied goods to the debtor on 2 September 2005. The outstanding balance due is €2,210, and the mid – market exchange rates were as follows:

<b>Date</b>	<b>£/€</b>
2 September 2005	1.50
1 October 2005	1.47
19 October 2005	1.40
1 December 2005	1.52

- (4) The debtor's eight employees were dismissed upon sequestration because the business ceased trading. Each employee is owed two months arrears of wages and six weeks redundancy pay. Also, each has two weeks accrued holiday pay. The total sum due for payment in lieu of notice for the eight employees is £6,000. The monthly equivalent of employee wages can be analysed as follows:

Four employees are paid £1,400 per month gross (£937 net)  
 Two employees are paid £900 per month gross (£603 net)  
 Two employees are paid £575 per month gross (£385 net)

The limit imposed by the Redundancy Payments Office of £290 per week should be used for your calculations.

- (5) A supplier of goods to the debtor claimed valid title to goods held in stock under their conditions of sale. The goods cost £5,800 and the total liability to the supplier for which a claim has been submitted, inclusive of these goods is £6,200.
- (6) The sum of £750 is due to the personal pension plan arrangement established by the debtor for the benefit of her employees, such plan being part of each person's contract of employment.
- (7) An arrestment of £3,000 was received in the hands of a customer on 3 September 2005 but the creditor took no further action. The creditor is due £6,000 and only advised you of the arrestment when a claim was submitted last week.
- (8) Claims received from other trade creditors total £130,000.
- (9) The debtor's husband had inherited a substantial sum following the death of his father in 2003 and provided a business loan of £10,000 to the debtor.

### **Requirements**

- (a) **Prepare the draft claims adjudication for presentation to your principal. (20 marks)**
- (b) **Explain the procedure that your principal will require to undertake in order to effect a distribution to creditors. (10 marks)**

**(30 marks)**