

JOINT INSOLVENCY EXAMINATION BOARD

*Joint
Insolvency
Examination
Board*

Joint Insolvency Examination

Wednesday 12 December 2007

PERSONAL INSOLVENCY (3 hours)

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 legislation are to that which was in force on 30 April 2007.**
References to 'the Act' are to the Insolvency Act 1986 as amended.

References to Sections, Schedules and Rules are to Sections and Schedules of the Insolvency Act 1986 and to Rules of the Insolvency Rules 1986 as amended.

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

1. Andrew Peacock entered into an Individual Voluntary Arrangement ("IVA") on 16 March 2004. You were appointed as the Supervisor of the IVA.

The principal terms of the IVA are set out below.

- The duration of the IVA will be twelve months.
- Mr Peacock will make voluntary contributions of £1,000 per month over twelve months commencing 28 days after the approval of the IVA.
- Mr Peacock's share of the equity in the matrimonial home, Nettlebed Cottage, Barchester, shall be realised and a sum sufficient to pay creditors in full shall be paid into the IVA.
- Creditors shall be paid in full.
- Should Mr Peacock default on his obligations then the Supervisor shall petition for his bankruptcy.
- Should the IVA fail the trusts shall cease save that assets already realised shall [after provision for supervisor's fees and disbursements] be distributed to arrangement creditors.
- Should Mr Peacock die during the course of the IVA its terms shall be binding on his Personal Representatives.

There were no standard terms and conditions.

The IVA was not varied in any way.

At the date of the approval of the IVA Nettlebed Cottage was valued at £150,000 and subject to a mortgage of £120,000. Mr Peacock held the property on trust with his wife as beneficial joint tenants.

Voluntary contributions were duly paid but the equity in Nettlebed Cottage was never dealt with. It appears that Mrs Peacock refused to agree to a re-mortgage and was unaware of the IVA when it was approved.

Mr Peacock died on 22 July 2007. He was 58 years old. Under the terms of his will Mrs Peacock and his son are the Executors and the whole estate passes to Mrs Peacock.

Nettlebed Cottage is now worth £200,000 and the outstanding mortgage is £120,000.

In addition to its security over Nettlebed Cottage the mortgagee also has assigned to it the benefit of Mr Peacock's term assurance policy for £100,000.

Mr Peacock also had a shareholding in Swallowtail PLC and a personal pension policy. The shares have a current market value of £18,000 and under the terms of the pension policy £40,000 is payable on death. The existence of the shares was not disclosed in the IVA and the pension policy was excluded.

IVA creditors which are all non-preferential, now total £68,000.

Mr Peacock's funeral expenses were £2,000.

No payments have been made from the IVA and Supervisor's unpaid fees total £5,000.

A meeting has been arranged with the Executors' solicitors to try to agree a course of action.

Requirements

Prepare a memorandum for your own use setting out the issues that might arise at this meeting, how you would deal with them and what solutions you might propose.

(20 marks)

2. George Camberwell was made bankrupt on 6 April 2007 on the petition of HM Revenue & Customs for assessed income tax of £45,000. He also owed £12,000 in respect of VAT, £5,000 to sundry trade creditors and £28,000 to his uncle.

George ran Café Nectar from long leasehold premises in his name. The Premises Licence was in the name of his wife who works in the Café. The business was profitable. George wanted to save it so he came to see your Principal about an Individual Voluntary Arrangement (“IVA”). After some negotiation the IVA was approved by creditors on 1 June 2007 and the Bankruptcy was annulled.

The key terms of the IVA are as follows.

- Contributions of £750 per month for 60 months commencing on 29 June 2007.
- Should contributions fall 60 days in arrears then the Supervisor shall petition for George’s Bankruptcy.
- Fees and expenses of the Bankruptcy are to be paid in priority to Supervisor’s fees and creditors’ claims.
- Family debt is to rank behind other unsecured creditors for the purposes of dividends
- In the event of the termination of the IVA the trust only survives in respect of realisations already made.
- In all other respects R3 Standard Terms and Conditions apply.

The first five contributions have been paid. Unfortunately a cooker has failed and needs replacing at a cost of £1,500. To make matters worse the public health inspector requires improvements to be made which will cost £2,500.

For the purposes of the IVA the business was valued at £35,000 as a going concern and the contents, excluding the cooker, were valued at £15,000.

Mr and Mrs Camberwell live in rented accommodation. They have no other assets or income.

Unpaid Trustee’s fees and costs total £4,500 and the balance of the Supervisor’s unpaid fees and disbursements are £2,250 and £550 respectively.

The receipts and payments account is set out below.

	£
<i>Receipts</i>	
Contributions	3,750
<i>Expenses</i>	
Supervisor's fees	1,175
Balance in hand	<u>2,575</u>

Requirements

Draft a report to your Principal setting out how he might proceed, illustrating the options with financial estimates.

(20 marks)

3. You are the Trustee in Bankruptcy of David Yellow, a property developer and inventor. You were appointed on 12 April 2007 by the Secretary of State.

Mr Yellow was made bankrupt on 28 February 2007 on the petition of Mr Samuel Skipper, a patent agent. The outstanding debt was for fees of £35,000 incurred in connection with the registration of a UK patent for a new kind of lightweight battery.

Your only realisation to date has come from the sale of a Morgan sports car. There is a credit balance of £7,500 on the Insolvency Services Account.

During the course of your review of Mr Yellow's affairs you have discovered the information set out below.

- Mr Yellow's bank statements show that over the last three years he made payments of £1,600 per month to Zbank Mortgages Limited. The last payment was in March 2007. Despite repeated requests Mr Yellow has failed to disclose the reason for the payments.
- In November 2004 Mr Yellow transferred his home, 13 Vetch Way, Barchester, to his estranged wife whom he has since divorced. He claims that there was no equity in the property since at the time of the transfer it was worth £250,000 and the mortgage with Xbank Limited was for £265,000. You have recently received your Chartered Surveyor's report on his drive-by valuation which values 13 Vetch Way at £355,000 at the date of the transfer.
- Mr Yellow's bank statements show that he made payments in 2006 totalling £95,000 to a company called V&C Cars Limited. A creditor has told you that Mr Yellow used to collect classic cars.
- Mr Yellow told the Official Receiver that he was dependent on his second wife's earnings from her job as a nursery school assistant. He also said that the house in which they live, which is valued at £350,000, and a Porsche sports car are both owned by her.
- Provable claims total £200,000.

Mr Yellow has not been co-operative.

Requirements

In a memorandum to your Senior Manager

- set out the obligations of the Bankrupt and the powers of the Trustee in Bankruptcy which might be relevant in this case. (8 marks)**
- identify and evaluate the possible realisations in this case and detail the initial steps to be taken to achieve those realisations. (22 marks)**

(30 marks)

4. You were appointed Trustee in Bankruptcy of Charles Blue at a creditors' meeting on 5 November 2007. Mr Blue was made bankrupt on the petition of HM Revenue & Customs on 31 October 2007.

The Official Receiver gives you the following information.

- Mr Blue owns a factory unit valued at £200,000 and subject to a mortgage of £125,000. It cost him £140,000 two years ago. The valuation is dated 12 October 2006.
- The unit is let to an unconnected business on a 20 year lease at a rent of £20,000 per annum. 15 years of the lease remain and it is thought that a rent review may be due.
- Mr Blue's home, 23 Chalkhill Road, Marble Downs, where he lives with his new wife, has been solely owned by him for many years. It was recently valued at £350,000 and there is an outstanding mortgage of £285,000.
- Mr Blue's former wife, Vanessa, whom he divorced on 13 April 2007 (the date of the decree absolute) lives in 21 Thistle Avenue, Marble Downs. This property is also solely owned by Mr Blue. It is valued at £480,000 and there is an outstanding mortgage of £470,000.
- Mr Blue owns 10,000 shares in a quoted company called Hairstreak PLC which he bought for £1 each six months ago. They are valued at 140 pence per share.
- Mr Blue also has an interest in a small leasehold unit called 5 Nettlebank, Marble Downs, valued at £10,000. The landlord is owed rent of £15,000 and the property is sub-let.
- Mr Blue's other creditors comprise the following

	£'000
HM Revenue & Customs	350
London Congestion Charge fines	5
Ex-wife	
- lump sum	30
- costs	10
- maintenance	15
	<u>410</u>

There are no other known creditors.

- Mr Blue had been a very successful businessman but had been somewhat distracted by an affair.
- On your way out of the meeting the Official Receiver handed you Mr Blue's Rolex watch which Mr Blue told him was worth £8,000.
- Mr Blue was not registered for VAT.

Mr Blue is currently unemployed.

Following a telephone conversation with the Voluntary Arrangement Service it is clear that HM Revenue & Customs would be vehemently opposed to an Individual Voluntary Arrangement for Mr Blue.

On 10 December 2007 a meeting of creditors to determine the basis of the Trustee's remuneration did not pass any resolution.

Requirements

- (a) Set out in the form of a memorandum to your senior manager how you would like him to deal with each of the assets in this case. (16 marks)
- (b) Prepare an estimated outcome statement including the relevant notes, on the assumption that no further assets are disclosed and making appropriate estimates where necessary. (14 marks)

(30 marks)

