

JOINT INSOLVENCY EXAMINATION BOARD

*Joint
Insolvency
Examination
Board*

Joint Insolvency Examination

Wednesday 5 November 2008

PERSONAL INSOLVENCY (3.5 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.

The time allowance has increased to 3.5 hours to include half hour reading and compilation time, but candidates may write at any time during this period.

Note: References to legislation are to that which was in force on 30 April 2008.
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. You are Trustee in Bankruptcy of Colin Cheetah, a builder and decorator who used to trade as CC Plasterers. You were appointed on 30 November 2007. Mr Cheetah was made bankrupt on the petition of HM Revenue & Customs on 1 October 2007. Realisations and payments to date are summarised in the following receipts and payments account.

	£
Creditor's deposit	400
Equity in matrimonial home	7,000
Book debts	14,600
Cherished number plate	1,500
Plant and machinery	600
VAT	2,923
	<hr/>
	27,023
	<hr/>
Official Receiver's fees	1,715
Bond	125
Secretary of State fee	4,254
Solicitor's fees	1,200
VAT	210
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	7,504
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Balance	19,519

VAT on book debts became payable to HM Revenue & Customs on receipt of the funds from the debtor.

Two assets remain unrealised. Colin's yard is held on a ten year lease, which is due to expire in March 2012, at a rent of £200 per month. At the date of the Bankruptcy Order there were arrears of rent of £1,200. Since then rent of £2,400 has accrued. To date the landlord has taken no action.

Your agent advised you that a premium for the lease of £10,000 to £12,000 might be obtainable and you have tried to sell the premises but with no success. Apparently there is some problem with access. Two days ago you received a letter from the local council stating that there is blue asbestos buried on the site.

The other asset is an uncollected book debt for £3,525 (including VAT). After a protracted dispute culminating in you obtaining a County Court Judgment against the debtor for the full amount, he has now telephoned you to offer £2,200 in full and final settlement. As you are concerned about enforcing the debt you are minded to accept the offer.

Your time costs to date are £5,500 and your disbursements £250.

Creditors who have notified you of their claims comprise:

	£
Builditezee	12,300
HM Revenue & Customs	28,500
Mrs V Cheetah	7,800

Mrs V Cheetah is Mr Cheetah's wife. She says that she lent her husband the money to "tide him through a difficult patch".

In addition to the creditors listed above Stateside Liners Inc, a supplier of materials, has lodged a proof of debt for US\$5,600.

Exchange rates were as follows:

1 October 2007	US\$2.10 to the £
30 November 2007	US\$1.90 to the £
5 November 2008	US\$1.80 to the £

Other than the landlord, creditors who have yet to prove, total £13,700.

You have decided that the case should be closed. You estimate that your costs to close will comprise time costs of £1,500 and disbursements of £150 plus VAT.

Requirements

- (a) Explain how you would deal with the two unrealised assets setting out in note form the procedures to be adopted. (7 marks)
- (b) Set out in note form the other steps you would need to take to close the case. (6 marks)
- (c) Prepare a receipts and payments account assuming that you had completed your administration of the estate, making any appropriate estimates. (7 marks)

(20 marks)

2. Last week your tax partner asked you, an insolvency partner, to see his client, Peter Panther. Peter came to see you yesterday and gave you the following information.

- Peter is employed in financial services.
- He earns £2,650 per month after tax and National Insurance.
- His wife works part time and earns £1,250 after tax and National Insurance.
- Peter and his wife have two children aged 21 and 19. Both children are at university.
- Peter is 55 and his wife is 53.
- Total monthly outgoings, before taking account of credit card and unsecured loan repayments, are £1,900 per month.
- He and his wife jointly own their home. It is worth £400,000 and they have a mortgage of £180,000.
- Peter has pension funds with an aggregate fund value of £80,000.
- Unfortunately Peter has credit card debts and loans totalling £60,000 and is unable to make the minimum repayments. You ascertain that the debt has accumulated partly because he and his wife have lived beyond their means and partly because of the cost of maintaining his children at university.
- Peter's wife has an overdraft of £2,000.
- Peter and his wife have no other assets apart from their cars which are subject to hire purchase agreements.

Requirements

- (a) **Set out the ethical issues you should consider before taking any appointment in this case. (5 marks)**
- (b) **Compare and contrast the advantages and disadvantages of formal insolvency procedures (Bankruptcy and Individual Voluntary Arrangement) with non-formal ways of dealing with debts and discuss the advice you would give to Mr Panther. (15 marks)**

(20 marks)

3. Mr Philip Macavity was made bankrupt on 22 August 2008 following a petition dated 18 June 2008 presented by Mrs Jellicle. Mr Macavity had been a self-employed dentist when his operation on Mrs Jellicle went badly wrong. Unfortunately Mr Macavity had neglected to provide himself with adequate insurance against such eventualities and is personally liable under a court order to pay £25,000 in damages and costs to Mrs Jellicle.

Mr Macavity also owes legal fees of £12,000 to his solicitors, Jinx & Co, who acted on his behalf in the negligence proceedings.

Following the Bankruptcy Order you were appointed Trustee in Bankruptcy of Mr Macavity's estate by the Secretary of State. The appointment was made on the basis of an Income Payments Agreement whereby Mr Macavity, who is now employed in a dental practice, has agreed to pay £500 per month over a three year period into the estate.

According to the statement of affairs and questionnaire completed and signed by Mr Macavity, there are no assets in the estate but there are the following liabilities:

	£
Mrs Jellicle	25,000
Jinx & Co	12,000
HM Revenue & Customs	157,000
Cougar & Co	17,000
Mrs Macavity (ex-wife)	23,500

The debt due to HM Revenue & Customs is for self assessment tax for two years to 5 April 2007. Cougar & Co were Mr Macavity's accountants and the debt due to Mr Macavity's ex-wife arose in family proceedings.

Yesterday Mr Cougar of Cougar & Co telephoned you and gave you the following information.

- (1) In June 2007 an order was made in family proceedings with the following provisions
- Mr Macavity's share in the matrimonial home was to be transferred to his ex-wife
 - Mr Macavity was to pay a lump sum of £30,000 to his ex-wife
 - Mr Macavity was to pay maintenance of £500 per month to his ex-wife with effect from 1 July 2007
 - Mr Macavity was to retain his pension fund
 - Mr Macavity was to retain his villa in Spain

Mr Cougar thinks that at the time of the matrimonial order the house was worth £550,000 and that there was an outstanding mortgage of £170,000. The pension fund was of little value and the Spanish villa was worth around £130,000.

- (2) Mr Macavity's girlfriend Leonie, is driving around in his Ferrari which is worth about £80,000. Mr Cougar is sure that this is Mr Macavity's vehicle because he remembers including it in Mr Macavity's last set of sole trader accounts.
- (3) Mr Macavity used to own an antique table which was worth about £35,000. Apparently Mr Macavity boasted that when he heard about the petition he gave the table to his mother who was owed £16,000.

- (4) Mr Cougar does not trust Mr Macavity and is very upset that his fees have not been paid, particularly as he believes that Mr Macavity lost a lot of money gambling and in July 2008 paid off a debt of £15,000 due to Mr Skimbleshanks a business associate of Mr Macavity.

Requirements

- (a) **Set out how you would treat the debts to Mrs Jellicle and Mrs Macavity in the event that you were to pay a dividend. (4 marks)**
- (b) **Assuming that what Mr Cougar tells you is true, consider and set out the investigatory and recovery action that you might take. (17 marks)**
- (c) **Summarise the offences committed by Mr Macavity and set out what action might be taken against him. (9 marks)**

(30 marks)

4. It is 30 October 2008. Frank Felix has arrived at your office at lunchtime without an appointment. Everyone else is out so you, an Insolvency administrator, see him.

He is in great distress. About four months ago he received a statutory demand posted through his letter box from HM Revenue & Customs for £32,000 in respect of unpaid VAT. He wrote to the local VAT office disputing the amount of the debt but never received a reply.

Two months ago he moved house but did not notify HM Revenue & Customs although he did complete a postal re-direction order.

Today he was telephoned by the local Official Receiver, told that a bankruptcy order had been made against him on the petition of HM Revenue & Customs and that the business had to stop trading. He tells you that he never received the petition and had no idea that proceedings were being taken.

Frank is a plumber trading in partnership with his wife as Frank Felix & Co.

Business assets are estimated to realise the following:

	£
Balance at bank	1,500
Tools and equipment	2,500
Stock	1,500
Debtors	6,500
Work in progress	n/k

Frank tells you that work in progress might be worth between £20,000 and £30,000 but he would need to check his records.

Frank Felix & Co makes profits of about £35,000 per annum before tax.

Frank's other assets comprise his interest in the matrimonial home and an endowment policy in his sole name with a surrender value of £7,500.

The house is jointly owned with his wife. Frank thinks it is worth £270,000 and there is a mortgage of £230,000.

Frank thinks that his wife has no other assets.

4. Creditors known to Frank comprise:

	£
VAT (disputed)	32,000
Self assessment tax	5,500
Trade creditors	4,500
Credit card	1,500

Frank thinks that his wife's only debt is approximately £1,000 due on a credit card.

He reckons that domestic outgoings including the interest only mortgage are £2,000 per month.

Requirements

- (a) Advise whether Frank Felix should accede to the Official Receiver's instruction to stop trading. Set out your reasons. (3 marks)
- (b) On the assumption that what Frank Felix has told you is true, how might he be advised to deal with the bankruptcy order? (7 marks)
- (c) On the assumptions that
- the petition was properly served on Frank;
 - the VAT debt is agreed at £32,000; and
 - work in progress is worth £5,000;
- prepare the statements of affairs which are relevant to advising on this case. (10 marks)
- (d) Based on the statements of affairs prepared in answer to question 4 (c) and other information provided in the question set out the range of options available. (10 marks)

(30 marks)