JOINT INSOLVENCY EXAMINATION BOARD

Joint Insolvency Examination (Scotland)

Wednesday 7 November 2012

PERSONAL INSOLVENCY (3.5 hours)

ANSWER ALL FOUR QUESTIONS

EACH QUESTION CARRIES TWENTY-FIVE MARKS

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 2012. References to ‘the Act’ are to the Bankruptcy (Scotland) Act 1985 as amended.

References to Sections and Rules of other Acts, Regulations and Orders will mention the Act, Regulation or Order.
1. Irving Corvedale ("Mr Corvedale") was made bankrupt on 19 July 2012 pursuant to a Bankruptcy Petition presented by a creditor on 1 June 2012, being the warrant to cite Date. You were nominated to act as trustee by the petitioning creditor.

It is now September 2012 and Mr Corvedale has not co-operated in any way with you to date and has not submitted his Form 3. All of your letters to Mr Corvedale seeking assistance from him were ignored.

Mr Corvedale solely owned a residential property but this was repossessed by the only mortgagee who sold it in April 2012. You suspect that the funds released were insufficient to repay the secured debt although you cannot be sure because your letters to the mortgagee asking for a copy of the completion statement have been ignored. Having been evicted from his home, Mr Corvedale did not provide an address at which he could be contacted.

At one time Mr Corvedale traded on his own account under the name Brown Cow as a wholesaler of toys and nursery goods. Brown Cow appears to have ceased to trade some time before Mr Corvedale’s bankruptcy but when you attend the trading premises (a warehouse rented on an informal basis) you have found a quantity of trading stock, an old computer and twenty boxes of assorted books and records. You have been told that Mr Corvedale returned some of the stock to unpaid suppliers and scrapped the remainder, although you still have possession of the computer and the books and records.

Following your appointment you receive information anonymously which would indicate that there are a significant number of companies, businesses and individuals claiming to be creditors. You are deluged by correspondence from potential creditors and others. A schedule of the 88 claims received to date suggests that the total amount due to creditors will exceed £400,000.

At a meeting of creditors held on 10 September 2012 a resolution was passed fixing the basis of your remuneration by reference to the time properly given by you and your staff in attending to matters arising in the Bankruptcy. No creditors’ committee was established.

Following a tip-off from a creditor you have been able to recover funds from a number of bank and building society accounts held by Mr Corvedale under assumed names. After paying all the costs of the Bankruptcy to date, including your own remuneration, you are holding £34,000.

Requirements

(a) Explain the steps that you should take as regards the assets and liabilities, and the other issues which may need to be addressed by you, in order to get to the point where you are able to declare an early first and final dividend to the creditors. (20 marks)

(b) In the event that he continues not to co-operate explain the position as regards Mr Corvedale’s discharge from bankruptcy and any other statutory legislation available to you. (5 marks)

(25 marks)
2. You are an Authorised Insolvency Practitioner. Yesterday afternoon you met Florence Yates (“Miss Yates”) and Monty Tower (“Mr Tower”). Miss Yates explained to you that she is finding it very hard to keep up the repayments on some debts incurred when renovating and furnishing a flat. Miss Yates told you that she had not realised that she might have a problem until last week when one of her store cards was refused at the checkout and her bank declined to meet a direct debit for the minimum monthly repayment on a credit card.

Having carried out the necessary preliminary ethical and regulatory procedures you sought further information and learned the following:

- Miss Yates and Mr Tower (who hope one day to be married) jointly acquired the flat for £130,000 in March 2011. They each contributed £15,000 to the deposit using money from their respective parents. The balance of the purchase price was provided by The Langham Building Society which holds a first charge. Under the terms of the 25 year mortgage, the interest rate is fixed for the first two years but is variable thereafter. The monthly mortgage payment is currently £460.

- Miss Yates is employed as manager of a group of three health and beauty salons and her monthly net take-home pay is £2,200. Mr Tower is an assistant accountant at a local factory. He currently earns £2,000 a month after all deductions although at a meeting held last week all staff at the factory agreed to a 15% reduction in take-home pay starting January 2013, as an alternative to redundancies being made.

- Miss Yates showed you statements showing twelve debts in her name comprising credit cards, personal loans and store cards. These totalled £49,000 and are due to eight different financial institutions. A brief perusal of the statements showed that Miss Yates has been incurring credit to meet day to day living costs and that the minimum monthly repayments required average out at 3% of the outstanding balances. You also noticed that Mr Tower is named as joint cardholder on four of Miss Yates’s credit cards on which the balances outstanding total £27,000.

- Mr Tower told you that he has no debts except for a three year loan taken out in November 2011 to buy a motorcycle. There is currently £10,000 outstanding and the monthly repayments are £420.

- Miss Yates does not have any savings. Mr Tower has two accounts at Gribbles Bank, a current account and a cash ISA. The credit balances on these accounts are £1,800 and £10,900 respectively.

- Miss Yates told you that, in addition to the debts already disclosed to you, she has a current account with Millstone Bank. Her overdraft facility is £7,500 which she has recently exceeded. This has prompted a letter from the bank asking her to make an appointment to see a manager.

- Miss Yates drives a car provided by her employers. Mr Tower told you that his motorcycle is a rare limited edition model which is much sought after. He told you that he needs the motorcycle as there is no other way for him to get to his place of work. Other than already disclosed to you, neither Miss Yates nor Mr Tower has any other valuable assets.

- You asked Miss Yates and Mr Tower to complete a schedule setting out what individually they pay out each month, excluding loan and debt repayments. This showed the following:
<table>
<thead>
<tr>
<th></th>
<th>Miss Yates</th>
<th>Mr Tower</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Household expenses</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mortgage</td>
<td>460</td>
<td>0</td>
</tr>
<tr>
<td>Service charge</td>
<td>160</td>
<td>0</td>
</tr>
<tr>
<td>Council tax and light and heat</td>
<td>260</td>
<td>0</td>
</tr>
<tr>
<td>Food and subsistence</td>
<td>800</td>
<td>0</td>
</tr>
<tr>
<td>Other household costs</td>
<td>260</td>
<td>0</td>
</tr>
<tr>
<td><strong>Other expenditure</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Motoring expenses (including fuel)</td>
<td>80</td>
<td>50</td>
</tr>
<tr>
<td>Sports club memberships</td>
<td>80</td>
<td>150</td>
</tr>
<tr>
<td>Pubs, clubs and restaurants</td>
<td>300</td>
<td>400</td>
</tr>
<tr>
<td>Electronic gadgets and games</td>
<td>0</td>
<td>200</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>2,400</td>
<td>800</td>
</tr>
</tbody>
</table>

- You discussed with Miss Yates and Mr Tower ways in which they might reduce their expenditure. After some argument Miss Yates persuaded Mr Tower that they could reduce the monthly food bill by £300. Both conceded that they have no need to spend money attending a sports club. They agreed that the money that they spend going out and enjoying themselves was far too high and that this could be reduced by 80%. Mr Tower accepted that he probably has enough electronic gadgets and games. You did not see much scope for making any further material reductions to their monthly outgoings.

Towards the end of the meeting you outlined your initial thoughts. Miss Yates accepted that the level of her debts meant that she would probably need to consider an insolvency process of some sort. Mr Tower could see that Miss Yates was in financial difficulties, but at the same time he did not warm to the idea that he too might need to do something, in large part because he was worried about how his employers and friends would react.

You agreed to consider the information you had been given and to arrange a second meeting at which you would advise Miss Yates and Mr Tower fully on their positions and how they should proceed.

**Requirements**

(a) **Setting out in tabular form Miss Yates and Mr Tower’s financial positions and their income and expenditure both before and after the agreed reductions are made, and comment on these.** (15 marks)

(b) **Prepare a note for the forthcoming meeting, setting out your considerations and advise on the options available to Miss Yates and Mr Tower.** (10 marks)

(25 marks)

**Note:** You should state what further information you will require and any assumptions that you have made.
On 22 October 2012 one of the partners in the firm for which you work advised you that he has been appointed Trustee in Bankruptcy (“the Trustee”) of Fernandes Sharp (“Mr Sharp”) by Motorparts Limited. The bankruptcy Award was made on 16 October 2012. You had previously advised the solicitor acting for the petitioning creditor, that you were able to consent to act for the case.

Two days ago, as manager allocated to deal with Mr Sharp’s case, you met him to discuss his affairs. From this interview, and from enquiries made by you subsequently, you have ascertained the following:

- Mr Sharp appears not to be a stranger to the Bankruptcy process because you have discovered that an earlier Bankruptcy Award was made against Mr Sharp in March 2007. A check of the individual insolvency register shows that, in relation to the earlier Bankruptcy, Mr Sharp’s discharge had been deferred for the maximum time allowed by the Sheriff in March 2010 and a Mr Fox was in office as Trustee in Bankruptcy. No further deferment applications have been made to the Sheriff.

- In May 2012 Mr Sharp started in business as a motor mechanic under the name Green Dragon Motors, trading from a leased lock-up garage on the Keystone Industrial Estate. Although Mr Sharp has had some difficulties in obtaining spare parts and consumables, he has been able to obtain supplies as required by paying mainly in cash and he is continuing to trade.

- Mr Sharp handed to you a small file of papers relating to the lock-up garage including a copy of the lease. It is a five year lease starting in May 2012 under which rent is payable monthly in advance. Mr Sharp was unsure about whether there were any rent arrears, although he thought that he may not have paid any rent since July 2012. According to Mr Sharp, the landlord is “flexible” and is usually content to wait for any arrears to be paid. However, from a recent letter to Mr Sharp from the landlord, it seems that Mr Sharp has ignored a prohibition in the lease against making structural changes to the building and has removed an internal wall, resulting in the roof beginning to sag. You know from dealing with other insolvency cases that there is currently no demand for units on the Keystone Industrial Estate.

- Mr Sharp, who has never married, lives alone in a solely owned flat (“the Flat”) acquired by him in 1986. Mr Sharp recalled that at the time of his earlier Bankruptcy, the Flat was worth about £250,000 and there was one mortgage on the Flat to a local building society which was owed about £255,000. In Mr Sharp’s opinion the current value of the Flat is now about £265,000 and he thinks that the mortgagee is owed about £248,000. Mr Sharp told you that he and Mr Fox had dealt with some papers in relation to the Flat in the summer of 2007 but he could not recall what these were and had not kept copies.

- In April 2012 Mr Sharp was contacted by Mr King, a former business acquaintance who owns and runs a rapidly expanding chain of general stores through a company called Rudgate Limited (“Rudgate”). Some years earlier Mr Sharp had helped Mr King to resolve a problem and, on hearing of Mr Sharp’s financial difficulties, Mr King expressed a wish to help him get back on his feet. The two men had therefore reached an agreement under which Mr King would give Mr Sharp a small shareholding in Rudgate, in return for which Mr Sharp would work for Rudgate as and when required, fitting out new stores. You have searched Rudgate’s file at Companies House and have ascertained that Rudgate is owned 90% by Mr King and 10% by Mr Sharp. Rudgate’s accounts for the year ended 30 June 2012 suggest that it was profitable and had shareholding funds of £840,000.

- Mr Sharp informed you that he is the sole beneficiary under the will of his mother who died on 2 September 2012. Confirmation has not yet been granted but the sole executor will be a local solicitor. There is no indication of the size of the estate, although Mr Sharp told you that his late mother owned her own home on which there was no mortgage. Mr Sharp indicated that he has received correspondence about the will from the solicitor and from Mr Fox but that he had done nothing with this as he does not understand what is going on.
From sketchy information given to you by Mr Sharp you have concluded that he has surplus income each month of under £20. Included in his list of monthly payments is a standing order for £110 to “Fox Associates – Clients’ Account”.

So far as you can ascertain there are no other potential assets to be dealt with. All indications are that the total amount of Mr Sharp’s creditors is likely to be substantial.

Yesterday you met the Trustee and explained what you have learned from your interview with Mr Sharp and from your brief follow up enquiries. The Trustee asked you to advise him on the issues you have identified and what needs to be done about each in the next month.

Requirements

Write a memorandum to the Trustee. Set out your analysis of each of the issues that you have identified and advise on the steps to be taken in relation to these in the next month. Where relevant, refer to the statutory and other authorities that support what you say.

(25 marks)
4. You are a Licensed Insolvency Practitioner. On 26 October 2012 you were consulted by Amber Stanway ("Miss Stanway") who told you that during 2010 she had incurred a small number of credit card and bank debts. She found herself unable to pay these when she was made redundant in February 2011. Having taken advice from a friend, on 26 May 2011 Miss Stanway presented her own Bankruptcy Application with the Accountant in Bankruptcy and an Award was made on 1 June 2011. Mrs Stanway was discharged from Bankruptcy on 31 May 2012. She had received a consent to act from a Trustee after finding a list of Insolvency Practitioners in her area. She had been interviewed by the Insolvency Practitioner prior to Application.

Miss Stanway gave you a copy of her statement of affairs as at the date of Bankruptcy. This shows that her only asset is an interest in a solely owned property ("the Property"). It seems clear to you that, even after factoring in an estimate for the likely costs and expenses of the bankruptcy, there should be enough equity in the Property to pay all the credit card and bank debts (£17,000) and to return a surplus to Miss Stanway.

Miss Stanway explained to you that she has three concerns about the conduct of her Trustee in Bankruptcy ("the Trustee"), as follows:

- In May 2012 Miss Stanway concluded that she could neither afford to buy the Trustee’s interest in the Property nor raise the funds to pay the Bankruptcy debts and expenses. Reluctantly she agreed to a voluntary sale of the Property. With Miss Stanway’s agreement the Trustee placed the Property with an estate agent who sought offers in the region of £300,000. Some initial interest was shown and a number of viewings took place, but no offers were received. In early October 2012 the agent suggested reducing the asking price to £280,000 and both Miss Stanway and the Trustee agreed to this. However, from a search on the internet, she has discovered that the Agent is marketing the Property at £240,000. She believes that at the lower price the Property is materially undervalued. A statement received recently shows that £210,000 is due to a mortgagee.

- Miss Stanway told you that, from information given by the Trustee in a recent progress report, she believes that the Trustee is incurring costs (including his own remuneration) that are out of all proportion to the size and complexity of the bankruptcy.

- Two days before meeting you, Miss Stanway was informed by the Trustee that a claim of £22,000 lodged by Miss Stanway’s neighbour had been agreed and admitted for dividend purposes. The Trustee did not provide Miss Stanway with any paperwork relating to the claim, but did intimate that the claim is for damages for trespass and legal costs that the neighbour incurred during a boundary dispute. Miss Stanway told you that at one time there had been a dispute but this was settled amicably many years ago. Miss Stanway is adamant that no debt is owed and accordingly she did not list the neighbour as a creditor in her statement of affairs.

At the meeting, Miss Stanway showed you copies of four letters written by her to the Trustee voicing her concerns. The letters were either ignored or responded to after a considerable delay. In Miss Stanway’s opinion none of the replies received from the Trustee adequately addressed the points raised.

Miss Stanway, who appears to be very meticulous about keeping good records, gave you a copy of her file of correspondence with the Trustee. Upon reading the file it is clear to you that the bankruptcy is a small case with no complications and that Miss Stanway has co-operated throughout. From what you can see Miss Stanway has good reason to be concerned about the Trustee’s actions.

Requirements

Write a letter to Miss Stanway. Advise how she should proceed in relation to each of the three issues raised by her. Explain in your letter how, now or in the future, Miss Stanway can compel the Trustee to provide information and explanations about the three issues and what she might do if she is dissatisfied with what she is told.

(25 marks)