

JOINT INSOLVENCY EXAMINATION BOARD

*Joint
Insolvency
Examination
Board*

Joint Insolvency Examination (Scotland)

Monday 7 November 2011

LIQUIDATIONS

(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 - and marks will not be awarded for extraneous material.

Note: References to legislation are to that which was in force on 30 April 2011. 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 Act and to Rules of the Insolvency (Scotland) Rules 1986 as amended.

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

1. Wooden Village Football Club Supporters' Society Limited ("the Society") is the supporters' club of Wooden Village Football Club Limited ("the Football Club"). The Football Club entered into Administration on 6 September 2011. The Administrator was unable to find a purchaser for the Football Club and the players were made redundant. There is no longer a Wooden Village Football Team. Most of the Football Club's supporters have switched their allegiance to the Golden Village Football Club.

The Society's management board has contacted you to establish what they need to do to close the Society and to distribute its assets.

The Society is appropriately registered with the Financial Services Authority as an Industrial and Provident Society (but is not regulated by the Financial Services Authority). The Society has 12,000 members of whom 500 have moved address without informing the Society of their change of address.

The Society's rules provide that any surplus be distributed to the members as at the date of winding up. Each member has one share and equal voting rights.

The Football Club allowed the Society to use, rent free, two rooms in the main building on the Football Club's grounds: one large room was used as a meeting room and bar and the other as an office. The Football Club's Administrator has informed the Society that it must vacate the premises. The Society has one part time employee, Freda, who has been bar manager for four years.

BALANCE SHEET OF THE SOCIETY AS AT 31 October 2011

Notes	£	£
Fixed Assets		
1. Investment in subsidiary, Wooden Village Football Club Limited		<u>120,000</u>
Current Assets		
2. Wooden Village Football Club Rainy Day Fund	75,000	
Investments – Wooden Building Society deposits	4,000	
3. Debtors and prepayments	2,000	
4. Memorabilia collection	1,000	
5. Fixtures and fittings	21,000	
6. Stocks	12,000	
7. Cash at bank and in till	9,000	124,000
Current Liabilities		
8. Trade and other creditors	(30,000)	
9. Accruals	<u>(3,000)</u>	<u>(33,000)</u>
Net Current Assets		91,000
Total Assets less Liabilities		<u>211,000</u>
Represented by:		
Called up share capital – shares of £1 each	12,000	
Accumulated surplus on income and expenditure account	<u>199,000</u>	
Shareholders' Funds		<u>211,000</u>

Notes

1. Investment in Wooden Village Football Club Limited

The Football Club issued shares which were purchased by the Society. The shareholding represents 99% of the Football Club's issued shares.

2. Wooden Village Football Club Rainy Day Fund

This fund, which is held in a separate account at Wooden Building Society and named WVFC Rainy Day Fund, has been accumulated since 1997 in the event that the Football Club encounters financial problems. At the time of opening the account, the Society's Chairman wrote to the Football Club's Chairman, setting out the circumstances in which the fund would be used, including the severe financial hardship of the Football Club.

3. Debtors and prepayments

	£
Freda	100
Games Galore Ltd	1,000
Prepayments – public liability and fixtures and fittings insurance	<u>900</u>
	<u>2,000</u>

Freda, the bar manager, owes the Society £100 for a loan to repair her car, which she needed to travel to work, and which needed emergency repairs.

The amount due from Games Galore Limited is an estimate of the commission due on a fruit machine located in the bar and which is provided, and owned, by Games Galore Ltd. The estimated amount of takings in the machine is £2,000. The Games Galore Limited agent collects the money from the machine and the Society is sent a statement of the commission due to it (50% of takings) the following week.

The Society's annual insurance of £1,200 was paid on 1 August 2011. The amount shown in the accounts represents the remaining nine months' cover.

4. Memorabilia

	£
Photographs and frames	600
Display case	<u>400</u>
Net book value	<u>1,000</u>

The Society has several photographs of Wooden Village Football Team dating from the 1920s to the present day. The amount shown in the accounts represents the depreciated costs of the photographs and frames.

The display case is for a pair of football boots that were worn by the most famous Wooden Village Football Club player who played for Scotland in the 1930s and who scored several goals for his country. The boots were donated several years ago by the player's grandson. A few years ago, a famous Scottish footballer's boots were sold at auction for £750,000.

5. Fixtures and Fittings

	£
Bar and associated fittings	12,000
Casks, crates and gas	1,000
Drinking glasses	800
Tables and seating	3,000
Glass washer, fridge and coffee machine	3,000
Wide screen television	1,200
	<u>21,000</u>
Net book value	<u>21,000</u>

The Bar, which was fixed to the floor and wall of the premises with the Football Club's permission, would cause considerable damage if it were to be removed. It cost the Society £15,000 in October 2010 of which half was paid in cash and the remainder was due on 1 October 2011, but has not yet been paid. Barfitter Limited, the supplier's, terms included a clause stating that title remains with it until payment has been made in full.

The coffee machine has a net book value of £1,200 and was purchased, from Coffee Co Limited, for £2,400 in May 2011. The purchase agreement provided that the Society pay £200 per month for 12 months, commencing 31 May 2011, and that title would pass to the Society on the final payment.

6. Stocks

	£
Alcoholic and non-alcoholic drinks	5,000
Other	7,000
	<u>12,000</u>
Net book value	<u>12,000</u>

Other stocks are T-shirts, mugs, car stickers and key-rings embellished with the Society's logo and the initials WVFCSS. Most of these items were purchased several years ago by an enthusiastic Committee member. They have not sold well because of competition from sales of replica shirts from the Football Club's shop.

7. Cash at bank and in till

Included in the cash at bank is £2,000 takings from a raffle held last week to raise funds for the local hospital. All of this amount is due to the local hospital except for the £400 prize which the winner has not yet collected.

8. Trade and Other Creditors

	£
Log Limited, Coach Hire	7,900
Oak Brewery Plc	10,000
Barfitter Limited	7,500
Web management company	1,000
Coffee Co Limited	1,200
Employees	500
Sundry other creditors	1,900
	<u>30,000</u>

The amount owed to Log Limited represents £4,900 coach hire during the last six weeks and, also, £3,000 for a booking to the next away match, which will now not take place.

Oak Brewery Plc supplies the Society with beer and other drinks for the bar.

£500 is owed to Freda for her October wages. The Society also owes tax and National Insurance of £300 in respect of Freda's employment, this amount is included in sundry other creditors.

Sundry other creditors also includes £1,300 owed to Satellite TV Co Plc being last month's rent for a satellite TV box. The Society entered into a one-year commercial contract with Satellite TV Plc on 1 June 2011, agreeing to pay £1,300 per month. The terms of the contract state that it cannot be revoked after the first month.

9. Accruals

Accruals represent accountancy fees which have not yet been invoiced.

Requirements

- (a) Prepare a statement of affairs of the Society as at 31 October 2011, making and explaining any commercially realistic assumptions. (14 marks)**
- (b) Prepare a Surplus/Deficiency Account for the Society as at 31 October 2011. (4 marks)**
- (c) Set out the advice that you would give to the Society's management board on the practical issues for dealing with the assets and liabilities before any solvent winding up. (4 marks)**
- (d) Set out the problems that a Liquidator would expect to encounter if making a distribution to the Society's members and set out what remedies are available. (3 marks)**

(25 marks)

- 2(a) **Set out the legal and practical steps that a Liquidator should take during the first week of a Liquidation that follows an Administration, whether or not the Liquidator was the previous Administrator. (6 marks)**
- 2(b) Happy Holidays Plc (“the Company”) entered into Administration, pursuant to Schedule B1 paragraph 14, on 1 June 2011 when it ceased to trade. Under a term of the proposals the Administrator was to be appointed Liquidator. On 21 October 2011 the Administrator sent, to the Registrar of Companies, Form 2.25B (Scot) Notice of Move from Administration to Creditors’ Voluntary Liquidation. The Administration was for a relatively short period as the purpose of the Administration was achieved fairly quickly and the floating charge holder was paid in full. The floating charge was registered on 1 November 2001.

A Creditors’ Committee was formed during the Administration comprising five creditor members.

The Company’s bank account was overdrawn on the date of Administration. The Administration bank account is £300,000 in credit, which is to be transferred to the Liquidator. The preferential and unsecured creditors at the commencement of the Administration, and outstanding at the start of the Liquidation, were £250,000 and £3,000,000 respectively.

Before a dividend can be declared to creditors, the following matters have to be dealt with by the Liquidator:

- 1) A VAT refund for the Administration period of £150,000 is due. HMRC has submitted a claim for £205,000 in respect of VAT due at the date of Administration.
- 2) RCP Limited is holding £200,000 of Company funds which it is refusing to hand over stating that it intends to set it off against £210,000 owed to it. RCP Limited provided store card services for the Company’s retail outlets. The arrangement was that RCP Limited collected money from the Company’s credit card customers which was placed into a designated bank account in RCP Limited’s name. The money was held at the Company’s request without any withholding, deduction or set off.
- 3) £870,000, due to the Company, is held by Happypayservices Plc. Happypayservices Plc provided services to clear credit card payments made by the Company’s internet customers. Happypayservices Plc has stated that it is not paying this amount to the Company as the customers have not yet taken their holidays. The Company’s records indicate that 90% of these internet customers have taken their holidays.
- 4) The Company has a bank account in Spain. The credit balance at the date of Administration was €150,000 and the Administrator had not used the account. At the date of Liquidation the balance was €145,000, as a result of fees and charges imposed. The exchange rates at the dates of Administration, Liquidation and today are £1 = €1.15, £1 = €1.20 and £1 = €1.25 respectively.
- 5) The Company operated Holiday Makers’ Club (“the Club”) which permitted individuals to save for a holiday by paying a regular monthly amount to the Club. Once an individual had saved enough, they could select an available holiday that the Company offered in its brochure. The amount of £250,000 paid into the Club by its members and not taken as a holiday at the date of Administration, are not included in the unsecured creditors. The Company did not operate a separate bank account for the Club funds.

Requirements

- (i) **For each of the items 1) to 5) listed above, set out the issues that the Liquidator should consider and state with reasons what steps he should take. (15 marks)**
- (ii) **Calculate and explain the amount that is available for a dividend to creditors. (4 marks)**
(25 marks)

3. Tom, Dick and Harry are authorised insolvency practitioners and partners in TDH & Co (“the Partnership”) which has specialised in Liquidations since May 2010. Tom and Dick were injured in a car accident on the way to a creditors’ meeting in July 2011 and both have not been at work since that time. In Tom and Dick’s absence, Harry has been carrying on the practice assisted by his manager, Bill, who became an authorised insolvency practitioner in March 2011. Sadly, Harry had a heart attack and died a few days ago.

Tom returned to work last week. In his post tray was a letter from the solicitors of Unhappy Limited which is a creditor of ZeeBee Limited (in Creditors’ Voluntary Liquidation). Unhappy Limited asserts that Tom had not replied to its correspondence or telephone calls and that the assets of ZeeBee Limited had deteriorated in value as they had not been sold promptly. Unhappy Limited stated that it intends to take steps to remove Tom as Liquidator of ZeeBee Limited.

Dick has decided to retire on the grounds of ill health. His current appointments are: three Members’ Voluntary Liquidations (including one joint appointment with Tom); ten Creditors’ Voluntary Liquidations (including two joint appointments with Harry) and fifteen appointments to companies subject to winding up by the court (including three joint appointments with Tom).

Harry’s appointments at the date of his death were: four Members’ Voluntary Liquidations (including one joint appointment with Tom); fifteen Creditors’ Voluntary Liquidations (including two joint appointments with Dick) and twenty appointments to companies subject to winding up by the court (including two joint appointments with Tom).

Requirements

- (a) Set out the steps that Unhappy Limited may take to remove Tom from office as Liquidator of ZeeBee Limited and what Tom should do when faced with this challenge. (12 marks)**
- (b) Set out the steps that Dick should take to resign as Liquidator of the companies to which he is appointed and set out his responsibilities following his resignations. (8 marks)**
- (c) Set out steps that need to be taken to deal with the vacancies of Liquidator occurring as a result of Harry’s death. (5 marks)**

(25 marks)

4. ABC Road Haulage Limited (“the Company”) was wound up by the court on 19 September 2011 following a creditor’s petition on 29 July 2011, on which date you were appointed Interim Liquidator. You are convening the First Meeting of Creditors which is to be held on 25 October 2011.

The Company had carried on business as a haulage contractor. It was formed in 2007 when it purchased the business and assets of Sorry Limited, which traded as ABC Haulage, from Sorry Limited’s Administrator. Following Administration, Sorry Limited entered into Creditors’ Voluntary Liquidation in 2008 and was dissolved last year. The shareholders and directors of Sorry Limited were Mr and Mrs Big. Trading had ceased on 5 August 2011 but the Interim Liquidator had been unable to make contact with the Directors or any company official until 6 October 2011.

The Company had three directors: Dopey Limited, Peter and Quentin. Dopey Limited resigned as a director on 25 November 2010. Peter and Quentin resigned on 19 September 2011.

Mr Big holds 99% of the shares in both the Company and Dopey Limited and he represented Dopey Limited at the Company’s Board meetings. The remaining shares in each of these companies are held by Mr Big’s wife.

The Company had arranged with Dopey Limited for it to carry out all of the Company’s administration and it charges a management fee for this. The Company’s accounting records are held electronically and the licence for the software, held by the Company, was not renewed in April 2011.

The statutory accounts indicate that the Company had never made a profit.

The Company’s statement of affairs at 29 July 2011 reveals assets of £25,000 cash deposited in Village Bank Plc and debtors of £15,000. The low amount of debtors seems to be a result of the decline in the Company’s business. The Company’s premises are subject to an onerous lease and it is likely that you, as Liquidator, will surrender it.

Creditors in the statement of affairs are:

	£	£
Preferential creditors		
Employees		100,000
Other unsecured creditors		
Town Bank Plc	1,000,000	
Shortfall to finance company	800,000	
HMRC	500,000	
Dopey Limited	1,200,000	
Creditors owed over £1,000	2,400,000	
Creditors owed less than £1,000	<u>2,000,000</u>	<u>7,900,000</u>
Total		<u>8,000,000</u>

There are no secured creditors. The fleet of fifteen heavy goods vehicles has been repossessed by the finance company.

There are 150 creditors who are owed over £1,000 and 3,000 creditors who are owed less than £1,000.

The amount owed to Dopey Limited in the statement of affairs is the management fee for administration work carried out by Dopey Limited and includes £300,000 being a fee for Mr Big’s time devoted to the Company since Dopey Limited resigned as a director. Several creditors have complained to you that the vehicles operated by the Company were being used by Dopey Limited, which carried on a similar business. Dopey Limited did not seem to pay a hire charge for the lorries. In addition, on 15 July 2011 the Company paid £150,000 to Dopey Limited in respect of management fees for 2010.

Two of the directors have loan accounts which are analysed as follows:

	£	£
Peter	80,000	
Quentin	<u>120,000</u>	
Total		<u>200,000</u>

Peter has gambling debts and his loan account represents cash that he has drawn on account of his salary. Quentin's loan account represents the amount that he owes the Company for a classic 1956 car that he purchased from it in January 2011 for an "on the road" price of £120,000. The Company purchased the car in November 2008 for £450,000.

The Company paid a dividend of £50,000 in May 2011.

You, as Interim Liquidator, are convening the First Meeting of Creditors which is to be held on 25 October 2011. Several creditors have indicated that they would like to be members of a Liquidation Committee.

Requirements

- (a) **Set out the procedure for calling, and the agenda for, a creditors' meeting in these circumstances. (10 marks)**
- (b) **Set out how you, as Liquidator, may recover funds in this Liquidation. Explain any potential problems and how they may be overcome. (15 marks)**

(25 marks)

NOTE: Ignore corporation tax