

CASE LAW

- TRUSTS AND LIQUIDATOR'S INVESTIGATIONS
- UTILITIES SUPPLIED AFTER OCCUPATION ENDS
- NO VAT ON FEES FOR IBRS

JIEB

- WHAT TO DO...
LEGISLATIVE UPDATE
- NEW PRACTICE DIRECTION FOR INSOLVENCY PROCEEDINGS
- CHANGES TO SCOTTISH INSOLVENCY

- COMPANIES HOUSE UPDATED DOCUMENTS
- ACCOUNTS TO COMMENT ON GOING CONCERN UNCERTAINTY

GENERAL INFORMATION

- PETITION LIMIT & DROS UNDER REVIEW
- OR ROTA RENEWAL
- RPO WAGE CLAIMS
- BANK STATEMENT READER
- ERA SPECIALIST

TECHNICAL UPDATE

Trusts and Liquidator's investigations

In the case of *Top Brands Ltd and another v Sharma and another Re Mama Milla Ltd* (in creditors voluntary liquidation) [2014] EWHC 2753 (Ch) a liquidator paid out funds based on legal advice that the money was subject to a Quistclose Trust in favour of the insolvent company's customers. The court found that the liquidator was in breach of s107 IA86 and had acted negligently in not conducting a full investigation in respect of the circumstances of the funds held and had not provided adequate information to the lawyer to be able to rely upon the advice given.

Utilities supplied after occupation ends

In the case of *Christine Mary Laverty and others as Joint Liquidators of PGL Realisations PLC and others v British Gas Trading Limited* [2014] EWHC 2721 the issue of whether a utilities supplier could claim as an expense of the administration for utilities supplied after the occupation of premises had ended was considered. The courts deemed that any utilities supplied after occupation ceased would be an unsecured claim in the administration.

No VAT on Fees for IBRS

In the case of *Airtours Holidays Transport Ltd v HMRC Ltd* [2014] EWCA Civ 1033 the Court of

Appeal has held that a UK company undergoing a financial restructuring was not entitled to recover VAT charged by accountants who prepared reports for the company's lenders.

New Practice Direction for Insolvency Proceedings

The new Practice Direction for *Insolvency Proceedings 2014* (PDIP) came into effect on 29 July 2014. There are a few key changes to be aware of including the requirements of practice direction 49B which has not been revoked and pertains to permission for a validation order when contributories present a winding-up petition. PDIP 2014 also details the need to give bank information and the amount in the account when applying for a validation order. A copy may be found here <http://goo.gl/mc6C1N>.

Further changes to Personal Insolvency in Scotland

There are so many draft statutory instruments coming into force on the 1 April 2015 that I have just listed them for your information: *The Bankruptcy (Applications and Decisions) (Scotland) Regulations 2014 SSI 2014/226*
Bankruptcy Fees (Scotland) Regulations 2014 SSI 2014/227
Bankruptcy (Scotland) Regulations 2014 SSI 2014/225
Bankruptcy and Debt Advice (Scotland) Act 2014 (Consequential Provisions) Order 2014 SSI 2014:draft
Common Financial Tool etc (Scotland) Regulations 2014 SSI 2014:draft

JIEB - what to do ...

Having exhausted my review of the SIPs and the Insolvency Guidance Papers (IGP) I thought it might be helpful to give some tips on what students should be doing between now and the exams.

Syllabus

You need to have completed your review of the topic areas and have checked the syllabus against your mind-maps. Do you have a mind-maps for all areas within the syllabus?

Joining the dots ...

Once you have completed your review of the syllabus the next step is to create four big mind-maps for each paper. I would recommend breaking the mind-maps into the following areas:

Pre appointment

Ethics

Bribery Act

Money Laundering

EU Regulations

IGP Control of Cases

Options questions

Pre-conditions for each option

SIP 1, 3, 8, 13, 16

Dos and Don'ts letter to Director/ Debtor

Procedures

Provisional Liquidator, Special Manager, MVL, CVL, MVL-CVL, CL, Dissolution

ADM court process, ADM QFC, ADM director, CVA moratorium, CVA no moratorium, ADR, FCR/ LPA

IVA with interim order, IVA no interim order, Bankruptcy, Interim Receiver, Special Manager, Deceased Persons Estate, Second Bankruptcy, Annulment, Partnerships

Debt Arrangement Scheme (Scotland) Amendment Regulations 2014 SSI 2014:draft
Bankruptcy (Money Advice and Reduction from Income etc) (Scotland) Regulations 2014 SSI 2014:draft

Companies House updated documents

The Guidance documents issued by Companies House GP2, GP4, GPLLP2 and GPLLP3 have been updated in July 2014. The updates emphasise that failure to deliver documents on time is a criminal offence. The guidance documents cover annual requirements, strike off, dissolution and restoration, and limited liability partnerships. Further information may be found here <http://goo.gl/5GIBG>.

Accounts to comment on Going Concern uncertainty

The FASB have issued guidance Accounting Standards Update No. 2014/15, Presentation of Financial Statements—Going Concern (Subtopic 205-40): Disclosure of Uncertainties about an Entity's Ability to Continue as a Going Concern, which may see a few more companies consider whether a formal insolvency process is appropriate. Further information maybe found here <http://goo.gl/dZgHRX>.

Petition Limit & DROs finally under review

Finally the government is reviewing the limits for petitions. The review will also include DROs and whether the existing limits on assets (under £300) liabilities (less than £15,000) and income (surplus less than £50pm) are appropriate and whether DROs are functioning effectively. Further information may be found here <http://goo.gl/UhT52U>.

OR Rota Renewal

The deadline for renewing your place on the OR Rota was 31 August. This does not stop you from applying but you will not be guaranteed to be on it as at the 1 October 2014. To identify whether you are on the Rota for the relevant area you may check here <http://goo.gl/KTGLDZ>.

RPO Wage claims may have been miscalculated

The Insolvency Service, having obtained legal advice, are reviewing all claims processed between 2007 and 2011 with a view to refunding money based on the wrong formulae for determining wage claims being used. Further information may be found here <http://goo.gl/YyhHYZ>

Bank statement reader

I wrote a few months ago about a product which can read and analyse bank statements which I would recommend for investigation work and the firm is now offering a 10% discount if you are interested. The discount code to quote is **THANKYOUJO** and is valid for 6 months.

ERA Specialist

The repercussions from Comet have highlighted the need for IPs to ensure that they are compliant with the more complex requirements of employment law, in respect of notification, consultation and redundancies. I would recommend contacting an external consultant if you do not have this expertise in-house. Desmond Winchester has many years' experience in this area and may be contacted on desmondwinchester@btinternet.com.

JIEB - what to do ...

Assets

Antecedent transactions, SIP 2, 4, 17, s234-236, IGP books and records
Trading mind-map
Sales memorandum
Sales contract
Distress, execution, ROT, Lien
Matrimonial home, IGP bankruptcy
IVA T & Cs (Protocol v R3)

Statutory

Day 1 to month 3, Closing mind-map
Meetings - SIP 7,9,10,11,12,
Remuneration SIP, Insolvency Practice Direction
Reports
Ceasing to act/removal/block transfers, IGP Succession Planning
Committee, SIP 15
Creditors' proof and proxies
Dividends
Employees, TR5, TR6
Powers/Duties of IP (ADM, LIQ, etc)
IGP Complaints

The list above is by no means exhaustive but it is certainly a start. Review your mind-maps and ensure that you have covered all the SIPs, IGPs, Case law and most importantly that practical steps have been incorporated in to all of the smaller mind-maps.

September is the time to put these mind-maps on your wall and just spend the month actively reviewing them. Obviously you will lose some of the detail, so you will also need to actively review the detail below on a regular basis as well.

Mocks

It was recommended to me when I sat the exams, and I certainly recommend it to my students to sit 7 mocks per, exam which is very hard to fit in solely in October because of revision courses, so I would recommend starting now. The key to passing this exam is **ACTIVELY** engaging with the material. Make sure you are on the pass list in March 2015.



Joanne Harris is a licensed Insolvency Practitioner and has 16 years' experience in insolvency dealing with all case types. She was formerly a Director of Technical and Compliance in a top 20 firm before starting her own business to supply technical services for insolvency practitioners without a compliance resource.

Joanne also provides training for the JIEB, CPI, CPPI & CPCI exams.

M: 07780 613826
E: jo@johconsultancy.co.uk
E: jo@insolvencyexamtraining.co.uk
W: <http://www.johconsultancy.co.uk>
W: <http://www.insolvencyexamtraining.co.uk>