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TECHNICAL UPDATE

IVA and PPI

In the case of **James Green (former Supervisor) v James Wright** the High Court in Manchester handed down their decision on 9th February 2015. The issue the court considered was whether the former Supervisor of an IVA was entitled to distribute PPI compensation paid to him after he had issued a certificate of completion stating that the debtor had no remaining liability and he had ceased to be a Supervisor. The judge found in favour of the debtor and ordered that the proceeds of the PPI claim be paid to him. The decision was based on the documentation releasing the supervisor from his role and cancelling the debtor's liability to the IVA creditors.

Establishment clarified

In the case of **USDAW v (1) WW Realisation 1 (2) Ethel Austin (3) SoS for BIS** the ECJ have confirmed their interpretation of the definition of establishment in line with the Advocate General. The definition of establishment is confirmed as its original meaning of more than 20 employees being employed in one location. The Court of Appeal will now need to hand down their judgment based on the ECJ ruling.

Failing to move from ADM to CVL prior to ADM ending

In the case of **Mond v Synergi Partners Ltd** Citation [2015] All ER (D) 81 (Apr) the court considered whether it was appropriate to make a retrospective

administration order when the administrators failed to file the conversion to CVL, prior to the Administration ending automatically after 12 months. The court refused as the order would not be able to meet a para 3 purpose and instead issued a winding up order for the company.

Validation order obtained on sale of property

In the case of **Wilson and another v SMC Properties Ltd and others** [2015] EWHC 870 (Ch), the court considered whether the sale of property by the company after a petition was presented was a transaction at an undervalue and voidable under s127 IA86 or whether they should validate the transaction. The court held that the difference between the sale value of £850k and the valuation of £900k was not significant. Also the sale was in good faith due to the timing of the transaction, contract entered into 6 March and petition advertised 3 April and completion of the sale 4 April. The court therefore validated the transaction.

Restricting use of the defence of *ex turpi causa*

In the case of **Jetivia SA and another v Bilta (UK) Ltd (in liquidation) and others** [2015] UKSC 23 the Supreme Court has unanimously upheld the Court of Appeal's decision that the *ex turpi causa* principle, or the 'illegality defence', is not available where a claim is brought by a company against its directors for breach of

JIEB

The annual tutors' meeting was held on 11th May 2015. The industry is going through a time of great change and fundamental to that is the basis upon which we are licensed. I am very grateful to Stephen Allinson, Chair of JIEB for giving me permission to share the main points from the meeting.

Fees

The JIEB has increased its fees:
 three papers £1,000
 two papers £750
 one paper £375
 The process to apply for exams will be opening at the end of May.

New Syllabus

The new syllabus will be available shortly on the ICAEW website.

E-marking

Last year was the trial of e-marking for the JIEB. Whilst some minor teething troubles were experienced overall the e-marking was considered a success and therefore this will now be applied to all three papers for future exams.

The feedback from the examiners for students was to ensure that you, as a student, understand how the booklet differs from previous years. In particular there are only so many pages allocated for each question so if you wish to write more than the pages allocated, you will need to obtain a supplementary booklet. The booklet numbers the questions in order so if you wish to start question 4 first then the start of question 4 is towards the back of

duty and also confirmed fraudulent trading claims have extra-territorial effect.

New CPR Part 36

The Civil Procedure (Amendment No 8) Rules 2014, in respect of part 36 offers, came into force on 6th April bringing clarification about what happens when offers are improved, withdrawn or changed. The legislation may be found here <http://goo.gl/b35fPv>.

CDM Regulations 2015

The Construction (Design and Management) Regulations 2015 came into force on 6 April 2015, replacing the 2007 regulations. A copy of the regulation may be found here <http://goo.gl/M52Gip>. A key difference is the introduction for the need to employ a Principal Designer.

Increase in statutory limits

The Employment Rights (Increase of Limits) Order 2015 SI 2015/226 came into force on 6th April 2015 increasing the week's pay from £464 to £475. A copy of the legislation may be found here <http://goo.gl/2DwXl3>.

New VAT 700/56

A new VAT 700/56 notice was published on 15 April 2015 to accommodate the following changes: transfer of insolvency VAT processing work from the National Insolvency Unit in Liverpool to the Insolvency Claims Handling Unit at Longbenton in Newcastle and the Enforcement and Insolvency Service at Worthing and clarification that, when a pre-appointment repayment claim is received, HMRC will conduct set-off enquiries and there will no longer be a £500 de-minimis.

Bankruptcy and Pensions

The Insolvency Service have issued guidance in light of the *Horton v Henry* case which may be found here <https://goo.gl/nxSFPz>.

Hearings moved from High Court to County Court

In an effort to reduce the current long waiting times to appear before a Registrar in the High Court, the Chancellor agreed that from 6 April certain cases be transferred to the Central London County Court and be heard before a District Judge. Here is a link to the guidance issued <http://goo.gl/AfcMGE>.

R3 Creditor Website

R3 has launched a website specifically for creditors, to try to engage creditors in the insolvency process. Here is the link to the website and I would recommend that this is put into to any initial notifications to creditors <http://goo.gl/YxnT6t>.

Health & Safety Nuggets

Here is the first in our series of H & S nuggets from Simon Joyston-Bechal, solicitor at Turnstone Law: If there is a safety incident at a site or business controlled by you as an IP, then your main concern should be criminal prosecution rather than a civil liability compensation claim. That's because only the civil compensation claim will be indemnified by insurers. In contrast, criminal liability for breaches of Health & Safety duties would take the form of a criminal prosecution for the IP, or the IP's staff member or firm, leading to a potential fine, imprisonment, and/or disqualification from acting as an IP. Click [here](#) for further information about training on H & S for IPs.

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2015 Exams

It is imperative to know what is going to be examined this year with so many changes being implemented between now and the exam. The examiner has confirmed that only legislation in force as at 30 April 2015 will be examined. However if you are aware of changes or new case law effective post 30 April by writing about both you will increase your holistic marks.

2016 Exams

I am sure controversy will abound at the JIEB's announcement this week of it's decision to test the new rules in 2016 if they are introduced before the 31 July 2016. That is it's current proposal, although it does reserve the right to review this if exceptional circumstances dictate. The exam dates will not be moved as they match the general accounting exams. I am sure that those providing training will be re-thinking courses and dates to ensure that the up-to-date material is available for students. This may also affect a firm's decisions to support students in 2016.

Partial Licensing

We still do not have a date of when partial licensing will be introduced but even if we did, the RPBs and the Insolvency Service have yet to determine how this will be introduced. Stephen Allinson, as the Chairman of the JIEB is currently trying to co-ordinate meetings with the relevant parties so that agreement may be reached before it is potentially introduced on 1 October 2015.

...the future of the JIEB

Case studies and computer based exams...may be a few years away yet.

All in all, I am encouraged by the increased openness by the JIEB around it's work and it's desire to engage with tutors and other stakeholders at these important times.



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

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