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Management

Legal Proceedings and Insolvency Question Paper, Answers and Examiner's Comments

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Legal Proceedings and Insolvency questions, answers and examiners' comments

LEVEL 5 DIPLOMA IN CREDIT MANAGEMENT

JANUARY 2016

Instructions to candidates

Answer **COMPULSORY** questions 1 and 2 and any **THREE** other questions

All questions carry equal marks.

Time allowed: 3 hours

You are reminded that, where appropriate, your answers should contain references to statutes and to case law.

Overall, the examiner believed that this paper was much better in terms of candidates' application to the questions, although the standards are not as high as the examiner would expect for a Level 5 paper.

More thought appeared to be given rather than just repeating the facts as learned. Some candidates referred to old terms and were therefore not up-to-date with current text, however, these candidates were not marked any differently but the advice is to stay up-to-date with terminology.

COMPULSORY SECTION

Answer **both** questions in this section

1. You are Credit Controller for a firm of accountants whose terms of payment are 14 days from date of invoice. You have a strict collections policy whereby you commence recovery action for any invoice that is still unpaid 30 days after the due date. Your client, Millie Moo Ltd, makes plastic milk cups for children and has an overdue invoice for £800. It has told you that cash flow is tight at the moment, but it is expecting large payments in from some recent orders and has asked you to wait 60 days for payment at which time the invoice will be paid in full.

In line with your collections policy at 30 days past due, recovery action is commenced. A Claim Form has since been served on Millie Moo Ltd.

With the above scenario in mind and making reference to it in your responses, give appropriate comments in relation to each of the following different possibilities in turn:

TASK

- a) You receive notice that Millie Moo Ltd intends to defend the claim.

Explain what this means in practice, what Millie Moo Ltd must do next and what attitude your firm might take of this situation as all records suggest non-payment is because Millie Moo has cash flow issues. (7 marks)
- b) Give **three** examples of different situations in which judgment might be obtained, briefly showing how each is appropriate to the above scenario facts. (6 marks)
- c) Explain what enforcement options are appropriate in the above scenario if judgment is obtained? (4 marks)
- d) Explain an alternative procedure that could have been followed instead of choosing recovery through the courts.
(Note: *You are not able to ignore your own firm's policy of taking recovery action*) (3 marks)

Total 20 marks

Question aims

To test the candidate on:

- spurious defences
- types of judgment
- enforcement methods
- alternatives to legal action.

Suggested answer

- a) The claim form will be served on Millie Moo Ltd and at this point they have several options, in the above scenario we learn that they have decided to defend the action. Defending an action means essentially that they are disputing it.

From the date of service Millie Moo has 14 days to respond, they can extend this time by completing an acknowledgment of service indicating their intention to defend, they will then have 28 days from the date of service to deliver their defence.

If Millie Moo Ltd does not deliver a defence by the 29th day then your firm can obtain judgement in default of defence.

If all goes to plan Millie Moo Ltd have bought themselves the time they had already requested of your firm i.e. an additional 30 days to settle the invoice.

This could be considered as 'playing for time' and in this situation your firm would be entitled to apply for summary judgment. To do this you would need to be sure that you have a clearly provable claim.

- b) Judgment in default**– if after 14 days from the date of service of the Claim Form, Millie Moo Ltd has not responded to it, an application for judgment in default can be made.

Judgment after acknowledgment – if Millie Moo Ltd completed the acknowledgement indicating an intention to defend but by the 29th day from the date of service no defence has been filed.

Judgment on defendants offer – Millie Moo Ltd could make an admission and offer to pay, we can accept or reject the offer and ask for judgment to be entered on the basis of the terms agreed.

Judgment after part-payment – if Millie Moo Ltd pay the claim but ignore the interest, court fees and recoverable costs.

Summary judgment – can be given by the court if:

- It considers that there is no realist prospect of success based on the defence to the claim and
- There is no other reason why the case or issue should be disposed of at a trial.

- c) The enforcement options available to us given the information available are:

- Control of Goods Order – empowers the Enforcement Agent (the amount is really too low to instruct the Sheriff/High Court Enforcement Officer) to seize and sell/take control of goods to the value of the judgment debt. We know that Millie Moo Ltd make a product that could be levied on.
- Third Party Debt Order – enables a judgment creditor to obtain an order against any third party holding money for, or owing money to, Millie Moo Ltd. We are aware that payment is expected from the orders that have recently been delivered by Millie Moo Ltd.

- d) A Statutory Demand could have been served on Millie Moo Ltd – this must be set out in the prescribed form according to the Insolvency Rules 1986, and it would give them notice of the intention to wind up the company if payment is not made within the required time period allowed.

Total 20 marks

In general, this question was answered well. Candidates are reminded to read the 'notes' when provided as in part d). Marks were not awarded if the note was ignored.

2. Pauletta is Credit Controller at 24.2 Limited. She has telephoned a corporate customer this morning only to be told by their receptionist that their limited company is being 'voluntarily wound up'. The debt is £19,000 and is now 116 days old. This is quite a significant debt for 24.2 Limited and Pauletta knows that she will have to prepare a report for the Credit Manager.

TASK

- a) Explain what steps should have been taken from account inception until notification that the company is being wound up, which might have had a positive impact upon 24.2 Limited's ability to collect the debt before news of the winding-up broke this morning. (10 marks)
- b) Apply your knowledge of Voluntary Winding-Up and contrast in detail the best and worse case situations that 24.2 Limited may now face. (10 marks)

Total 20 marks

Question aims

To test the candidate on: Pre-action protocols, Insolvent and Solvent Voluntary Winding Up

Suggested answer

- a) From inception the account should have undergone rigorous credit checking to ensure the correct details are on file, the credit worthiness and their ability to pay the debts as they fall due.

This information should have been reviewed on a regular basis so that any deviation from this is spotted and action taken, for example placing the account on credit hold/stop once the debt becomes overdue or exceeds the set credit limit.

Ensure you have the correct address and contact details so that you know you are chasing the correct person for payment and they are receiving your demands.

Then a strict collections policy should be followed to ensure that any queries are sorted quickly thereby giving the debtor no excuse about paying the invoice and accurate records kept of all contact with the customer.

These are known as pre-action protocols. It is essential that you have set procedures to follow in order that you can prove these have been followed if there is any question / doubt further down the line. This may be in relation to a payment that has been received or simply to prove that you have done everything to facilitate payment.

- b) There are two types of Voluntary Winding Up - Insolvent and Solvent.

If 24.2 Limited are lucky enough this will be a Solvent liquidation in which case all debts will be paid in full. .

Statutory declaration of solvency

A members' voluntary liquidation can only occur if the directors can swear the necessary statutory declaration to certify that the company is solvent.

This means that a statement of the company's assets and liabilities show that the company will be able to pay its debts in full (plus interest at the official rate) within a period not exceeding 12 months from the date of the resolution (s. 89(1) IA).

However, if this is a insolvent liquidation then 24.2 Limited may not recover anything at all, the best it can hope for in this situation is a dividend will be paid of X pence in the £ but full recovery under these circumstances is highly unlikely.

In both Solvent and Insolvent liquidations 24.2 Limited will have to submit a proof of debt form and the process in both cases will be under the supervision of an authorised insolvency practitioner.

There are also similarities in relation to the rules on creditor priority and assets.

Total 20 marks

This question required the candidate to discuss 'pre-action protocols', those that did so were awarded for their efforts.

Few candidates remembered that all winding up does not have to be due to insolvency and therefore missed scoring higher marks.

OPTIONAL SECTION

Answer any three questions

3. You are Credit Controller for a company that supplies equine products. Your customer, Apache Riding Supplies, is a sole trader with unpaid invoices due to you of £9,000, however despite several telephone conversations with the owner, Chiara, the promised payments have not materialised. You are aware that she rents a field where she keeps several horses purely for recreational use. Your manager has now instructed you to send a 'letter of claim' with a view to commencing recovery action.

TASK

- a) What must you include in the letter of claim and what are the reasons for you sending this? (8 marks)
- b) Several weeks later after you have followed through with County Court action you receive a 'Notice of Defence'. Illustrate what this is and summarise what obligations you now have. (4 marks)
- c) Following a later legal application by your company, a further document is received as follows:

"It is adjudged that Judgment for the Claimant against the Defendant is given in the following sums:

- *Damages £9,000*
- *Interest thereon at 8% in the sum of £653*
- *Fixed costs of £845*
- *Counsel fees of £480 on the basis of the Defendant's unreasonable conduct.*

It is ordered that the Defendant pay to the Claimant the sum of £10,978 on or before 4 January 2016."

However, since Apache Riding Supplies has not paid the judgment debt, what enforcement option would you recommend based on the information available? You should describe in some detail the option you propose and explain your reasons for its selection. (8 marks)

Total 20 marks

Question aims

To test the candidate on:

- Letters of claim and their importance
- disputed claims
- enforcement options.

Suggested answer

- a) The reasons for sending the letter of claim is to provide the debtor with one last chance to settle the debt or get in touch with you to discuss the options available to them for settlement. The letter of claim shows the debtor you are serious about recovery.

It should contain all the relevant information about the debt and how it was arrived at along with details of any interest and costs that may be added to the account if the debt is not settled.

So, a letter of claim should include:

- The amount outstanding, what is it for, when it should have been paid
 - The time within which the debtor must respond—normally seven days from the date the formal letter was sent
 - The action the creditor will take if payment is not made within that period
 - Whether or not the creditor intends to claim interest, and on what basis it will be claimed
 - Whether or not the creditor intends to claim any court fees and recoverable legal costs
 - An address and telephone number for the debtor to contact in response to the letter.
- b) A notice of defence indicates the defendant's intention to defend (dispute) the claim, it will be referred to a judge who will define what needs to be done to bring the case to a conclusion.

It will outline the timetable that must be followed, this is known as the judge 'managing' the claim.

It is important to follow the timetable as set out as failure may result in a claim /defence being dismissed - 'struck out

- c) Given the amount involved, the High Court Enforcement Office should be instructed, since the amount is too high to use Enforcement Agents who may only collect on judgment debts in the County Court up to £5000.

As the judgment is in the County Court it will be necessary to 'transfer up' to the High Court in order for the High Court Enforcement Officers to be instructed. They will then attend on the defendant with a view to identifying goods on which they may levy.

This may include vehicles or any asset the defendant owns which may be removed and sold at auction to realise the amount of the judgment debt. The defendant will also be given one last opportunity to pay before the goods are removed.

The reason for selecting this option is generally there will be a lot of equipment associated with horse riding including the horses and therefore the chances of there being assets on which to levy would be quite high.

Total 20 marks

Candidates that read the scenario were able to apply it to the answer and gained good marks, whilst others appeared to 'forget' the scenario existed and the resulting answer was poor.

4. Mr Inos owes your company £4,000. It was agreed that this could be paid upon completion of the sale of the matrimonial home as Mr Inos is a bankrupt.

After 12 months Mr Inos is discharged from bankruptcy. You note that this debt is still on your ledger and, after further investigation, you note that £3,000 of the debt relates to **after** the date of the bankruptcy discharge, whilst £1,000 relates to **before** the date of the bankruptcy order.

TASK

- a) Define 'bankruptcy' and, using appropriate law, explain what effect bankruptcy has in relation to matrimonial homes and its potential impact upon the scenario above. (12 marks)
- b) Reflecting on the above scenario, email your Finance Director detailing the options available for recovery of this debt. (8 marks)

Total 20 marks

Question aims

To test the candidate on: Bankruptcy in relation to marital home, before and after discharge of debts.

Suggested answer

- a) Bankruptcy is an insolvency procedure applicable to individuals, whereby an independent trustee maintains and sells the assets of the bankrupt in order to repay creditors.

The bankrupt's matrimonial home usually presents problems as it is frequently jointly owned by the bankrupt's spouse, but will often be the most valuable asset in the estate. That said, the rights of a co-owner and the bankrupt to continue residing in the home are to some extent protected.

Section 336 IA deals with the question of jointly owned property. The court has a discretion to grant an order for possession in favour of the trustee but must take into account the needs and resources of the spouse and any children, as well as the interests of the bankrupt's creditors. The courts will also consider whether the co-owner contributed materially to the bankruptcy.

After 12 months from the vesting of the property in the trustee, the court must assume (unless there are exceptional circumstances) that the interests of the creditors outweigh those of the spouse, any children and the bankrupt. In effect the law allows a one-year moratorium before a trustee will normally seek a possession order so as to allow the bankrupt and his family time to relocate.

The Enterprise Act 2002, in the spirit of reducing the stigma of bankruptcy, limits the trustee's opportunity to sell the bankrupt's principal residence to 3 years. This ensures that the trustee acts swiftly to realise the bankrupt's interest in his home or to obtain a charging order over it. In the above scenario, if the house is not to be sold and to avoid a charging order, there may be sufficient goodwill from the spouse and equity in their share of the home to settle or give a personal undertaking agreeing to pay the invoices.

b) Set out as an email

Dear Finance Director

The element of our outstanding balance that relates to prior to the discharge will need to be written off as this is not recoverable. We have already submitted a proof of debt and may receive a dividend as and when.

With regards to the element that relates to after the discharge there is no reason why we should not chase this as normal.

Subsequently even apply for a bankruptcy order or commence recovery proceedings as this is not covered in the original bankruptcy.

Regards.

Total 20 marks

This question required the candidate to outline bankruptcy in relation to the marital home. Candidates were able to score well for raising a point and then developing it. An easy mark was available for setting out of an email, as requested in the question. The email should be set out as one that would be sent in usual business format.

5. Gurpal is a keen cyclist who has recently had a bonus in his wages and decided to treat himself to a new cycle. Friends advised that he would get the best deals online and so he browsed the internet and then placed an order for his dream cycle.

Seven days later he received the boxed cycle, but being busy at work he did not open it for 15 days. When he opened it up he found that they had sent the wrong frame size. He was greatly disappointed and got straight onto the phone to the supplier. The supplier claims that the delivery has been made to the order specification and as far as they are concerned, that is the end of the matter.

Gurpal printed a copy of the order when he placed it and can see that the frame size is definitely not what has been delivered.

TASK

- a) Analyse the above scenario and advise Gurpal what he should now do to encourage the supplier to resolve his dispute without the need for formal action. (6 marks)
- b) Should all attempts at an amicable resolution fail, explain to Gurpal what is meant by 'small claims' and advise him if this would be appropriate action in this case, justifying your response throughout. (10 marks)
- c) What should Gurpal anticipate will happen if his 'small claim' is defended by the supplier and, briefly, how should he prepare for that? (4 marks)

Total 20 marks

Question aims

To test the candidate on:

- dealing with collection before resorting to legal action
- small claims process
- referral to mediation
- importance of record keeping.

Suggested answer

- a) Gurpal has evidence of the order that was placed to show that it does not match what has been delivered.

He should therefore get in touch with the supplier, send copies of the documentation and request that they correct the error.

Giving a timescale for them to respond and explain what he is expecting from them i.e. a replacement cycle that is the correct frame size.

He should go on to say that if they do not rectify the situation within the timescale, he will take further action...

Including details of a claim for interest and costs.

It is important to include contact details so that they can get in touch with him and any response Gurpal does get he should keep for his records.

- b) Small claims relates to civil court proceedings where a claimant (Gurpal) sues the defendant (the supplier) in the County Court for a claim value typically less than £10,000.

Civil Procedure Rules are in place to deal with cases at reasonable speed, be understandable to users of the system and offer appropriate procedures at reasonable cost.

As long as Gurpal has sent the letter of claim as set out in a) above then it can be shown that he has followed pre-action protocol.

The next step would be to make an application to the court on the relevant form which will be served on the defendant (the supplier).

The defendant will then be allowed time to respond at which point the supplier may 'defend', admit and resolve the claim and costs, or do nothing.

If the defendant does nothing, then Gurpal will be able to obtain judgment in default and follow this up with enforcement action.

- c) Gurpal will need to get together all of his documentary evidence which should be put into chronological order in readiness.

If the claim is defended the matter will be allocated to a track, this will be followed by Discovery (review of each other's documentation) and then maybe a hearing.

The likelihood is that this matter would be suggested to be referred to the small claims mediation service therefore removing the need for a hearing if the matter is successfully mediated.

Total 20 marks

This question could be applied to a lot of day-to-day purchases by individuals shopping on the internet.

It was disappointing to see that most candidates would not know what to do in a similar situation if it were to happen to them.

Perhaps if candidates thought about the scenario and applied it to themselves they would have answered this better.

6. The Crochet Hook is a haberdashery partnership. Pearl and Kitty are the partners and have enjoyed a good sound business relationship for the last twenty years. Kitty has always looked after the stock whilst Pearl, being of a more mathematical mind, has always looked after the accounts. When Pearl was away on her annual vacation, Kitty opened a letter addressed to The Crochet Hook and was shocked to find a demand for teapots, milk jugs and sugar bowls in the amount of £2,500. As this just didn't make any sense to Kitty she rang the supplier.

From the conversation it appeared that these had been delivered to the address where Pearl's daughter Sally had been in business as a café. Kitty recalls a conversation with Pearl. Sally was undertaking a refurbishment to try and turn around trade as business was not good. Unfortunately the café went out of business two weeks ago. It appears that Pearl had used the Crochet Hook to assist Sally with her purchases for the café.

TASK

- a) Determine how the major aspects of partnership law influence the scenario facts in relation to the two partners. (6 marks)
- b) Evaluate the scenario, justifying your response with reference to appropriate law. (8 marks)
- c) What are your conclusions as to the possible outcomes in this scenario? (6 marks)

Total 20 marks

Question aims

To test the candidate on:

- partnerships
- joint and several liability
- partnerships in relation to the Company Directors Disqualification Act 1986.

Suggested answer

- a) A partnership is 'the relationship that subsists between persons carrying on a business in common with a view to profit' as defined by section 1 Partnership Act 1890.

Partners are jointly and severally liable for the debts of the partnership.

Any liability incurred by a partner carrying out their duty in the partnership is binding on all of the partners.

Joint and several liability means that a creditor has recourse both jointly against the assets of the partnership and individually against the assets of each partner.

- b) Pearl has used the partnership to obtain the items for Sally therefore as partners they are jointly and severally liable for the debts of the partnership.

Any liability incurred by a partner carrying out their duty in the partnership is binding on all the partners.

However, following the Insolvent Partnerships Order 1994, the law relating to partnerships was brought into line with that of companies.

Therefore the partners are covered by the Company Directors Disqualification Act 1986.

This makes provision for the disqualification by the court in conjunction with offences under the Companies Act 1986 and the Insolvency Act 1986.

- c) Kitty should ask Pearl to personally reimburse the partnership or pay the invoice direct to the supplier as it is not a legitimate partnership debt.

Kitty may have recourse against Pearl if it appears that Pearl has been acting fraudulently.

This would depend if they want to continue with the partnership or if the relationship has now broken down so that it becomes impossible to continue in partnership together.

There is an element of trust that has been lost and this may make the relationship impossible to carry on. On the other hand they may be able to put this incident behind them and agree some form of regular review where the two of them sit down and look at all aspects of the partnership together rather than leaving certain areas to each other.

Total 20 marks

Candidates who were able to respond to this question by mentioning Partnership Act 1890 and 'joint and several liability' along with basic knowledge of partnerships and the link with Company Directors' Disqualification Act 1986 would have scored well here.

7. Jim currently runs the family business Jumbo Jumbo Akimbo Ltd. The business has been in the family for 125 years and the name was chosen due to its sentimental connections to the family. Despite all Jim's efforts the company is now in liquidation.

You are Credit Manager at Lanray Ltd who have been supplying Jumbo Jumbo Akimbo Ltd for the last 3 years. All your dealings have been with Jim and you have just received notification of the liquidation as the company owes you £2,500.

In the meantime, you notice a new credit account has been opened in the name of Akimbo, Jumbo, Jumbo Ltd and the customer contact is 'Jim'. The account balance is currently £7,400.

TASK

- a) Discuss 'prohibited names' and the 'phoenix syndrome' with specific reference to the above scenario and to relevant insolvency law. (12 marks)
- b) How could this knowledge be used to your advantage in relation to the newly discovered credit account for Akimbo, Jumbo, Jumbo Ltd? (8 marks)

Total 20 marks

Question aims

To test the candidate on:

- Directors' liabilities in insolvency
- similar company names
- phoenix syndrome
- Sections 216/217 of the Insolvency Act 1986.

Suggested answer

- a) It is understandable that Jim would want to keep the name of the company similar if there are sentimental reasons for doing so. Other Directors rely on the similarity of the new company name to try and hoodwink people into thinking it is the same company. None of these reasons though are good from a creditors' perspective and before 1986 there was little creditors could do about it.

Where struggling companies were put into liquidation by the directors, who then operated immediately as directors of a new company with a very similar name, this became known as the 'Phoenix Syndrome', and was problematic for creditors.

Under section 216 of the Insolvency Act 1986, directors of a company that has gone into insolvent liquidation are prohibited from using the same or a similar name to that of the insolvent company for a period of five years after the liquidation unless it has been approved by the court.

Section 216 of the Insolvency Act prevents the re-use of a company name without jumping through some hoops and satisfying certain criteria. Like most things there are exceptions and where valid reasons exist, the directors are protected by the veil of incorporation.

Alternatively, the situation may fall within certain and limited exceptions. These include:

- Where an application has been made to court to get an order for it to be a valid company name, creditors should be advised of this and it must be advertised in (London) The Gazette

- They can give notice to creditors that they are going to use a prohibited name
 - A liquidator sells the name along with the business
 - Twelve month rule – for example two company's trading side by side with similar names, said to have own identity as already in existence with own trading record
- b) The consequences for Directors in breach of section 216 of the Insolvency Act are that they are committing a criminal offence and they can be personally liable for the debts of the new company.

This means the veil of incorporation can be lifted and the director can be pursued personally. The director is immediately liable and cannot take protective measures.

You should therefore carry out additional due diligence checks specifically on the Directors of the new company to ascertain if they are in breach of section 216 and then proceed accordingly.

Case law relating to the above is

- Ricketts – Air Equipment Company Limited and Air Component Company Ltd –Directors considered name to be sufficiently different to original company name but the court said it was too similar
- ESS Production Limited and Electronic Sales Services Limited – ESS was used informally when trading.

Total 20 marks

This question was geared towards the use of similar company names and the Phoenix Syndrome.

Candidates who were able to demonstrate an understanding of S216/217 of the Insolvency Act 1986 would have scored good marks for this question.

8. A judgment debtor has not made payment to you. There are several enforcement actions available to you as judgment creditor. Focussing your response upon how these methods operate, rather than the administrative process of asking for them:

TASK

- a) Explain in detail how **four** of these enforcement actions are intended to work, illustrating your response with a justified example of when it would be most appropriate to use each action you detail. (16 marks)
- b) What factors will you need to consider before deciding to enforce your judgment? (4 marks)

Total 20 marks

Question aims

To test the candidate on enforcement options and when to use them

Suggested answer

- a) The following enforcement actions are available (mark scheme below) and candidates should address up to 4 of them only:

Control of Goods orders (previously known as Warrants of Execution/Writs of Fi Fa)

A control of goods order is a process which empowers the Enforcement Agent or High Court Enforcement Officer to go to the judgment debtor's premises and seize and sell/take control of the debtor's goods in order to sell them to raise the sum due to the creditor.

Order to Obtain Information from Judgment Debtors

This process brings the debtor before the court to be examined as to his/her means. Application is made, on Form N316 in the case of an individual and Form N316A in respect of the officer of a company. Application is made to the Court in which judgment was obtained. The questioning will, however, be conducted in the debtors court.

Third Party Debt orders

This process enables a judgment creditor to obtain an order against any third party holding money for or owing money to the debtor. Application must be made, on a standard form – Form N349 – to the court in which the judgment was obtained.

Charging orders

A charging order prevents the debtor from disposing of land or securities without paying off the judgment debt. Application is made to the Court in which judgment was obtained. There are two standard forms of Application. One, N379 is used in respect of property or land and the other N380, is used in respect of securities or assets other than land owned by the debtor.

Attachment of earnings orders

The order is made against the debtor's employers, and requires the employer to deduct a sum determined by the court from the debtor's weekly or monthly wage and pay that sum to the court until the judgment debt is discharged. The process only applies to employees, not to the self-employed or to the partners in a firm. Generally, attachment is not common in the case of commercial debt as many debtors are either self-employed or not in permanent employment!

Application is made on a standard form and must be made in the county court covering the district in which the debtor resides.

Equitable execution

A judgment creditor can have a 'receiver' appointed by the court over a particular fund or asset—for example, to receive rent direct from a tenant who pays rent to the debtor. The procedure is complex and expensive, and is seldom used in respect of normal commercial debts

Charging order over a debtor's share in a partnership

An application can be made for a charging order based on the partner's equity in the partnership, and can lead to an order for the sale of the debtor's shares in the business. Again, this is an expensive and complex process which is seldom used.

Sequestration

Sequestration entitles a person nominated by the court to seize/take control of the debtor's assets.

The sequestrator can then apply to the court for an order to sell those assets to ensure compliance with the court order. Sequestration is applicable only where a judgment debtor has failed to comply with an order or injunction, for example, where the court has ordered the debtor to pay money into court.

Warrant of possession or delivery

A warrant of possession can be issued to enforce a court order for possession of land, for example, as a result of a mortgage action where the mortgagor has defaulted on payment

A warrant of delivery arises when the court has made an order for the return of specific goods—for example, goods under a hire purchase or lease agreement—and the debtor has failed to comply.

- b) Consideration would need to be given to what you know of the financial situation of the judgment debtor, the value of your judgement, the cost of the enforcement, any timescales or restrictions.

Success will depend on the debtor having either assets, goods, money or a source of income. If the debtor has none of these then no type of enforcement will succeed.

Court fees can be expensive, if success is unlikely then that could be a further amount wasted.

Materiality of the debt should be considered, is it worth spending more time and money to recover a small debt when the judgment will be registered against the debtor in any event and probably influence any future granting of credit.

Total 20 marks

This question gave the candidate an opportunity to pick up some high marks. It required:

1. *Identification*
2. *Methodology*
3. *Example.*

Anyone able to demonstrate all three of these for a max of four enforcement methods was well rewarded.

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