



Institute of Credit Management

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

Level 5 Diploma

June 2013

June 2013

9LPI/PQP/1

continued

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June 2013

9LPI/PQP/2

continued



Institute of Credit Management

Legal Proceedings and Insolvency questions, answers and examiners' comments

LEVEL 5 DIPLOMA IN CREDIT MANAGEMENT

JUNE 2013

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.

COMPULSORY SECTION

Answer **both** questions in this section

A better all-round knowledge of the subject which was a refreshing change.

Candidates are not reading the question thoroughly through and therefore costing themselves marks by wasting time writing about topics which are not relevant nor asked for in the question.

Candidates should be able to apply their knowledge to form an opinion or give advice but the examining team felt that candidates lacked this in most of the papers marked and therefore candidates did not attain good marks.

1. Ivory Keyes is a piano tuner and has run a successful business for a number of years. Recently a customer, who is a self employed pianist, didn't pay her bill, so Ivory took the matter to court and obtained judgment in the sum of £486. Ivory has asked for your advice with regards to enforcement for this sum.

TASK

Explain and evaluate the options available to Ivory Keyes in order to recover the debt.

Total 20 marks

Question aims

To test the candidate understands of the three most common methods of enforcing a judgment on a small claim

Suggested answer

Attachment of Earnings Order

- Attachment of Earnings Act 1971 gives the County Court exclusive jurisdiction to deal with attachment of earnings applications
- An order is made against the debtor's employers
- Requires the employer to deduct a sum determined by the court from the debtor's wages
- The sum is calculated based on the debtor's net disposable income. If this does not reach the court's 'protected earnings rate' then no order can be made.
- The employer must pay that sum into court until judgment debt discharged or employment ceases
- Only applies to PAYE employees (not self employed or partners)
- Not common in commercial debt as debtors are usually unemployed or self employed
- Application is made on a standard form
- Application to the County Court covering the district where the debtor resides
- Court serves an order on the debtor requiring them to provide particulars:
 - employment
 - wages
 - overtime
 - deductions
 - liabilities
- At this stage the debtor has the opportunity to make an offer to pay
- Failure to disclose this data can be considered contempt of court with the rare penalty of imprisonment imposed
- Court has the power to require the employer to give the court a statement of the debtor's earnings.

Good answers will note that the current fee to obtain an attachment of earnings order is £100. From 4 April 2011 – Civil Proceedings (Amendment) Order 2011.

Charging Order

(Civil Procedure Rules Part 73, refers to interim and final orders, affidavits are no longer needed).

- Prevents the debtor from disposing of land or securities without paying off the judgment debt
- Usually related to land owned by the debtor
- Can apply to other assets/securities held by the debtor
- Will not prevent disposal of property if no equity available
- Application is made to the court where judgment obtained
- Standard forms N379 (for property) and N380 (other assets/securities)
- Application made without notice, with a Statement of Truth
- Application must set out:
 - details of judgment
 - court will make an interim charging order and fix a date for a hearing to enable court to consider making the order final
- Order will not be made final if debtor insolvent, as an order would be to prefer the judgment creditor over the other creditors
- Once obtained, if in respect of land, creditor can register the charge with the land registry
- Although the creditor has a charge over land, s/he has no right to sell it and will usually wait for the debtor to sell it
- Can enforce charge by making a fresh application for an order for sale.

Good answers will state proof of ownership is available from the appropriate land registry.

Execution

- Process which empowers the bailiff of the County Court or High Court Enforcement Officer to go to the judgment debtor's premises and seize and sell his goods in order to raise the sum due to the creditor
- Neither has any right of forced entry to domestic premises unless walking possession has previously been obtained from the debtor
- HCEO's may prove more determined than bailiffs as they are paid on results
- Initially, goods are levied, or identified for possible seizure and sale. Failure to pay by a determined date will result in the bailiff/HCEO returning to collect identified goods.
- Can only seize goods belonging to the debtor
- Tools of the trade, vehicles, books and other equipment that are necessary for the debtor to use in his/her business cannot be seized
- Clothing and bedding are also excluded from seizure

- Debtors can apply to suspend a warrant of execution by making an offer of repayment.

Good answers will mention:

- From 1 April 2004 following Courts Act 2003 sc.7, the High Court Sheriff is no longer involved in writs of execution
- Many Under Sheriffs and Sheriffs Officers therefore became High Court Enforcement Officers under the Act
- Sheriffs restricted to own county area but HCEOs may deal with enforcement throughout England and Wales.

Attachment of Earnings Order is not applicable as the judgment debtor is self-employed.

Charging Order is not financially viable: costs involved to apply and register the order will outweigh the advantage of having it given the small amount of the debt.

Execution is the most appropriate enforcement method in the matter described, but only County Court Bailiffs can be used to enforce as the debt amount is below £600, High Court and County Jurisdiction Order 1991 S.1 1991 No.724 para 8 (1)b).

Due to the small size of the debt, Ivory may decide to take no enforcement action at all.

Good answers would make reference to an Order to Obtain Information i.e., on financial status (oral exam).

Where there are no assets directly owned, an Order to Obtain Information might highlight amounts owed by third parties and an order could then be sought.

Refusal to furnish the Court with information as per the order could result in contempt of court.

Total 20 marks

The average mark for this straight-forward debt recovery question was 46% which was disappointing.

2. Samaria Navaz and Lucy Bunn have been friends since school. Three years ago they decided to go into partnership and open a cake shop, trading as Navaz Bunns. They invested equal amounts into the setting up of the business and the first year's trading was good. However, during the next two years major road works and parking restrictions near their shop meant trade was dramatically reduced.

They have decided that they cannot carry on making these losses and can no longer cope with the emotional strain this downturn in business is causing them.

Lucy has also recently split with her husband and is struggling financially with her personal debts while Samaria is personally financially secure. She owns her own house outright; having inherited it from her parents, and has an annual allowance which they made provision of for her in their will.

They agree to wind up the partnership.

TASK

Identify and assess the options available for a creditor to recover their debts from the partners and/or partnership.

Total 20 marks

Question aims

To test the candidate understands of:

- Partnership in general
- Enforcement against partnership in particular
- The effect of insolvency on partnerships.

Suggested answer

Partnership is the relationship that subsists between persons carrying on a business in **common** with a **view to a profit**.

A creditor can pursue the debt under the concept of joint and several liability.

Any liability incurred by a partner carrying out his duty in the partnership is **binding on all the partners**, with the exceptions for limited partners. A creditor therefore has recourse both **jointly** against the assets of the partnership and **individually** against the assets of each partner. Where there are two partners, a creditor has **three rights of action**. One against each partner and one against the partnership.

In this case, assuming the partnership itself holds little value, the creditor should ideally pursue Samaria for payment, due to her holding more personal wealth than Lucy. Securing a judgment and enforcing through a charging order against her house seems the most logical action to take.

Partnership Voluntary Arrangements:

- **Proposed** by the partners
- **Unless already** in administration or being wound up, then the administrator or liquidator may propose one
- **Where parties** in joint bankruptcy proceedings, and partnerships being wound up, the trustee may make the proposal
- **Rules relating** to nominee reports, creditors meetings and the effect of approval of PVA are the same as for IVA

- **Schedule 1** Insolvent Partnership Order 1994.
- Author to add how viable this is in the case in question including:
 - how the creditor should pursue this option
 - how the partners should pursue this option
 - what the outcome and repercussions of such action would be for both the creditor and partners.

Summary Administration

- Court able to issue certificates of summary administration to all partners or one or more partners presenting joint bankruptcy petitions
- Max **£20k** debt level calculated by reference to the aggregate indebtedness of the partnership and the individual partners separate debts.
- Author to add how viable this is in the case in question including:
 - how the creditor should pursue this option
 - how the partners should pursue this option
 - what the outcome and repercussions of such action would be for both the creditor and partners.

Joint and Separate Estates

- Trustee or liquidator of the joint estate can prove for dividend purposes in the **separate estates** of the individual partners where the partnership assets are **insufficient to extinguish** the partnership debts fully
- **Preferential creditors** in the joint estate not treated preferentially in separate estates
- Rank as **unsecured creditor**.
- Author to add how viable this is in the case in question including:
 - how the creditor should pursue this option
 - how the partners should pursue this option
 - what the outcome and repercussions of such action would be for both the creditor and partners.

Credit will also be awarded for consideration of third party order in the annual allowance paid to Samaria.

Total 20 marks

Unfortunately very poor answers were provided for this answer. Candidates were not able to define a partnership or show an understanding of partnerships in general.

OPTIONS SECTION

Answer any **three** questions from this section

3. Load of Rubbish waste collection company have recently decentralised their credit control function. All the new depot based credit controllers are spending a week at head office to learn about the company credit control procedures. You have been brought in to explain the legal process in relation to debt collection.

The company have a strict billing and collections policy. Bills are raised weekly for waste collections made and payment is due within 14 days. Waste collections are put on stop once the invoice reaches 30 days beyond due date for payment. These terms are currently set out in your terms of business that are sent to every customer at the commencement of a contract. Bills are generally for less than £1,000.

TASK

- a) Explain what the credit controllers need to consider before issuing proceedings. You should include pre-action protocols in your answer along with reference to the importance of your trading terms. (10 marks)
- b) Should legal action be necessary and the action was defended, what track would the matter be allocated to? Explain why this is the case, and summarise the rules for this track. (10 marks)

Total 20 marks

Question aims

To test the candidate understands of:

- The credit controller's application of pre action protocols
- The importance of terms of trade and their validity
- How the Small Claims Track works in practice.

Suggested answer

a) C – collection

R – resolution

I - identity

M - means

E - evidence

- Should not issue a claim form until the customer has been given the opportunity to pay the invoice
- Need to make contact with the customer
- Check you have the correct address
- Ensure they have the invoice
- Check there are no disputes/queries that need resolving
- As the customer is a company if not paid then you can issue a 7 day letter before action
- If no response to the 7 day letter then you can issue a claim form.

Payment and trading terms

- Claims for recovery of commercial debt are under contract law
- Terms of trade relevant when proceedings ensue
- Very important to include when payment is due
- Customer must be made aware of your terms and accept them, either before or at the time the contract was made.
- 'Battle of forms', whoever submitted the last document (post order but pre delivery) wins.

Good answers will link their answer to the scenario in the question – particularly the fact that a 30 day chase before credit stop and potential legal action is a tight turn around. The need for robust, swift collection procedures is paramount, particularly considering the high cost of court action against the relatively low value of most invoices.

b) As most debts are under £1000 they would be allocated to Small Claims track:

- This track deals with matters for less than £5,000
- It involves informal arbitration by a District Judge
- Steps and timescales in written directions issued by the court
- Failure to comply may result in claim being struck out
- No right of appeal against judgment
- May apply to set aside judgment on one of the following grounds:
 - serious irregularities affecting the procedures or judgment
 - District Judge made a mistake of law
 - application is made by a party not present or represented at the hearing
 - no provision for recovery of costs.

Good answers will mention District Judge has the power to order the payment of court fees, witnesses reasonable travel costs and, where appropriate, loss of earnings to a limited figure.

Good answers will also contrast this against the other tracks available, noting in particular, the fact that this track is:

- quicker
- cheaper
- more informal.

Credit may also be awarded for consideration of non-recovery of legal fees.

Total 20 marks

This was a popular question with the majority of the candidates choosing to answer it. More detail was required for higher marks to be awarded.

4. Safety Razor Blade Company is a global firm that deals in the manufacture and supply of 'own label' razors and razor blades. Since the downturn in the English economy, it is no longer viable to manufacture the product in the UK. A decision has therefore been made by the directors of the company to close down the UK arm and transfer manufacturing abroad whilst they are still solvent.

TASK

- a) Explain what is meant by the term 'winding up'? (2 marks)
- b) With reference to S.89 (1) Insolvency Act 1986, what is a statutory declaration of solvency? Explain in your answer how it is calculated and communicated and when it may be used. (6 marks)
- c) Outline **three** events that must take place once a resolution to wind up a company has been passed. (6 marks)
- d) Your company is owed £4,850 in unpaid invoices when you receive the notification of the winding up. Draft a short memo to your finance director explaining what effect this will have on your debt, and what your company can do in response. (6 marks)

Total 20 marks

Question aims

To test the candidate understands of the process of company insolvency and its effect on outstanding invoices.

Suggested answer

- a) Winding up is when a company either solvent or insolvent is **dissolved** and the company's **legal existence is terminated**. Winding up is **never** concerned with **promoting the survival** of the company in any form. It is concerned only with the winding up of the company's affairs.
- b) A member's voluntary liquidation may only occur if the directors can **swear** the necessary **declaration to certify the company is solvent**.

A statement of the company's **assets and liabilities** show the company will be able to **pay their debts in full**, plus any interest at the official rate, within a period not exceeding **12 months** from the date of the resolution.

S89 (1) Insolvency Act 1986

- Declaration must be made within a period of **5 weeks** before the resolution to wind up
- Notified to the companies registrar within **15 days** of the resolution
- If not able to pay its debts in full liquidation becomes a creditor's voluntary liquidation.

Good answers will mention creditors protected from false declarations by directors by the sanction of a fine or imprisonment.

- c) Resolution must be filed with registrar of companies within 15 days of the resolution and notice of it must be advertised in the London Gazette within 14 days of the resolution.

If no liquidator is nominated, the power of the directors can not be exercised, except with court approval S.114 Insolvency Act.

The company must cease to carry on business, except where it is beneficial to the winding up, S.87 Insolvency Act.

Alteration in membership or transfer of shares is void after resolution, unless approved by the liquidator.

The company must call a meeting of creditors – to take place no later than 14 days after the meeting of members.

The directors must prepare a statement of affairs to be laid before the meeting of creditors.

d) Need to lodge a proof of debt:

Corporations Regulation 5.6.65(2): A notice in accordance with sub regulation (1) must specify a date, not less than 21 days after the date of the notice, on or before which formal proof, in accordance with Form 535 or 536, of a debt or claim must be submitted to participate in the distribution.

A creditor must ensure that a proper proof of debt is lodged or they run a real risk of not sharing in a dividend. Practitioners will always give creditors adequate notice of the need to lodge the proof but a practitioner cannot simply add a creditor to the dividend list without a formal proof of debt.

Practitioners will send out notice of the Solvent Liquidation and include the relevant proof of debt form. You should complete this and send it back in order to have your claim lodged.

The timescale for returning the proof of debt is usually stated in the accompanying letter.

In a Solvent Liquidation the liquidator will arrange for all agreed lodged claims to be settled within 12 months.

This question was only attempted by a small number of candidates and those answers were not very comprehensive. In order to score more marks the candidate must make a point and then develop it. A disappointing effort given the current economic climate; the examining team would have expected more candidates to have an understanding of this type of situation.

5. You are a credit controller working for a car accessories company. One of your trade customers, Jeremy May trading as Flash and Fast, has been getting further and further behind with his payment of invoices. The current balance of £1,940 is now well past your payment terms. The sales director has had enough of the hassle from this customer to supply more goods and has approached you to issue a statutory demand with a view to 'taking it all the way'.

TASK

- a) What must a statutory demand contain and how must it be delivered? (6 marks)
- b) Outline the procedure for a creditor's petition for a debtor's bankruptcy. Include the process for issue, service and hearing in your answer, along with possible outcomes. (8 marks)
- c) If Jeremy May trading as Flash and Fast does not pay following the statutory demand, can you petition for bankruptcy and is this the best course of action? Explain the reasons for your answer. (6 marks)

Total 20 marks

Question aims

To test the candidate understanding of the procedures for personal insolvency, including statutory demands and petitioning for bankruptcy.

Suggested answer:

- a) • The amount
- The debtors name and address
 - The name and address of the creditor
 - Time limits applicable for a response to the demand
 - Postal service is allowed
 - Personal service is better (prevents debtor denying knowledge of the demand)
 - Must be in one of the prescribed forms – Insolvency Rules 1986, relevant for this situation is Form 6.1 – for a liquidated sum payable immediately.

Good answers will state the creditor is under an obligation to take all reasonable steps to bring the demand to the debtors' attention.

b) Issue of Petition

- Setting out full details of the debt (how made it / incurred)
- Judgment over £5K can claim interest @ stat rate from judgment date currently 8% above base rate
- Plus can include costs awarded in previous proceedings
- At the time of issue must be verified by an affidavit
- Court fee and official receiver's deposit must be paid at the time of issue
- If petition dismissed the deposit is returned to the creditor

Service of Petition

- Should be served personally on the debtor
- Process server may produce affidavit if the debtor is avoiding service = substituted service on an application without notice.

Hearing of the Petition

- If the debtor intends to oppose he should give the creditor at least 7 days' notice by filing a notice at court specifying the grounds of his objection
- Other creditors may appear at petition hearing
- Must give notice to the petitioning creditor
- Petitioning creditor must then submit to court
 - A list of creditors who have given notice of intention to appear
 - A certificate stating that the debt remains outstanding plus details of any payments received since the petition.

Possible decision at the hearing

- Bankruptcy order
- Dismissal
- Stayed judgment
- Adjournment
- To make an order for the appointment of an IP to consider an IVA, under s. 273 Insolvency Act.

c) Yes bankruptcy application is possible because:

- the debt is over £750
- the debtor has failed to comply with stat demand within 21 days
- the debtor has not applied to have it set aside .

This is assuming that:

- The stat demand was correctly issued
- The debtor has been given every opportunity to pay or settle the debt
- Debtor's assets exceed £2K
- Debtor's liabilities under £20K
- Debtor not been bankrupt/applied for an IVA in previous 5 years.

Good answers will note that this does not necessarily mean that bankruptcy is granted or that this is the best course of action.

Bear in mind the value of the debt, the obvious fact that the customer is still trading and the lack of additional information on the debtor. Investigation into the debtor's situation would be more useful at this point.

Half of the candidates answered this question. Candidates need to add meat to the bones in their answers and show a more comprehensive knowledge of the subject in order to attain higher marks.

6. Rochester Home Builders (RHB) use heavy duty equipment that is supplied by a heavy machine supplier. Due to the large sums involved, the company borrows the money to purchase these items from PETTTLES, a private bank that specialises in such loans. As part of the agreement, PETTTLES hold a debenture. RHB are going through a bad period due to the prolonged wintery conditions and are now struggling financially.

TASK

- a) Explain why PETTTLES have the debenture. (3 marks)
- b) Outline the purpose of Receivers and Administrative Receivers and explain the differences between the two. (5 marks)
- c) Under what circumstances could PETTTLES appoint a receiver? (5 marks)
- d) List the powers of an Administrative Receiver and explain whether any of these apply to the situation PETTTLES find themselves in. (7 marks)

Total 20 marks

Question aims

To test the candidate understands of:

- Debentures
- Receivers
- Administrative receivers.

Suggested answer:

- a) A debenture provides security for a loan. It usually gives a fixed & floating charge over the company's assets and allows the debenture holder to appoint a receiver in certain specified events. PETTTLES hold a debenture as security for the loan they have provided.

b)

Receivers	Administrative Receivers
Appointed under a fixed charge	Appointed under a floating charge or a debenture containing a floating charge (dated prior to Sept 2003)
Appointed under Law of Property Act 1925 (land only)	Appointed over substantially the whole of a company's undertakings
Applies to the charged asset only	n/a?
Does not have to be an authorised Insolvency Practitioner	Must be an authorised Insolvency Practitioner

a)

- c) Rochester Homes are struggling to pay, so any of the three may give PETTTLES an excuse to appoint a receiver:
- Failure to repay an advance on demand
 - Failure to make a loan payment on the due date
 - Failure to pay interest on advances.

- d) • Section 42 Insolvency Act – all powers set out in schedule 1 of the Act
- Taking possession of & collecting in the property of the company and taking such proceedings as may be necessary to do so
 - Selling or otherwise disposing of company assets
 - Appointing solicitors, other professionally qualified people and agents to provide assistance employing and dismissing employees
 - Carrying on the business of the Company
 - Dealing with subsidiaries
 - Making any arrangement or compromise on behalf of the company
 - Presenting or defending a petition for the winding up of the company
 - Doing all such things as may be necessary for the realisation of the property of the company.

All the above may apply if a receiver is appointed by PETTLES.

Good answers will also state that the debenture may expressly confer further powers on the administrative receiver in addition to those contained in schedule 1 Insolvency Act.

This was not a popular question and was not well-answered.

7. 'On Your Lead Ltd' is a dog walking company operated by two couples, Jenny and John Grey and Kishan and Sam Patel, all of whom are directors of the company. They employ 25 staff and have an annual turnover of £1.2 million. The service they provide is essential to people who work long hours or who cannot walk their own dogs for one reason or another. However, the service is not cheap. During the downturn in the economy On Your Lead Ltd has seen customers stopping their service or taking longer to pay their bills. This in turn means On Your Lead Ltd is finding it difficult to pay their debts when they fall due.

TASK

- a) What is a Company Voluntary Arrangement (CVA) and who can apply for one? (4 marks)
- b) Explain what a CVA moratorium is. Include in your answer, the obligations and restrictions of parties, and reasons why it may or may not be granted. (10 marks)
- c) Who should a CVA proposal be made to and what should they submit? (4 marks)
- d) Based on your answer in a) - c), would 'On Your Lead Ltd' benefit from a CVA and would they qualify for a CVA moratorium? Give brief reasons for your answers. (2 marks)

Total 20 marks

Question aims

To test the candidate understands of Company Voluntary Arrangements and the effect of the moratorium on creditor action.

Suggested answer:

- a) • Part 1 of the Insolvency Act 1986.
• Procedure to enable companies to reach a compromise with the majority of creditors
• Binding on all creditors

Three types of person may apply:

- The Directors
- The Administrator appointed under an administration order
- The Liquidator, where the company is in liquidation.

- b) Insolvency Act 2000:
- Where a company director proposes a CVA
 - Company will benefit from moratorium (a 'stay' or freeze) on creditor action
 - Provided it is a 'small' company. To be classed as a small company must satisfy 2 of the following conditions:
 - employees less than 50
 - balance sheet less than 2.8million
 - turnover less than £5.6m p.a.

- Not granted if:
 - on date of filing, company subject to winding up, administration or admin receivership
 - had a similar moratorium in the last 12 months
 - Lasts for 28 days
 - Can be extended a further 2 months with creditors' agreement
 - Appointment of a moratorium committee to oversee it
 - Directors remain in control of the company with support of nominee
 - Asset disposals must be approved by nominee
 - Asset disposals only if benefit the company & creditors
 - Assets subject to a fixed charge, only be disposed of with consent of the charge holders
 - All business stationery must state the nominees name and the fact that a moratorium is in place on them.
- c) Made to the nominee who is required, under section 2 1A to submit a report to the court within 28 days of being given notice of the proposal. During a moratorium, the directors remain in control of the company with the support of the nominee and should contain:
- A document setting out the terms of the proposed voluntary arrangement
 - A statement of the company's affairs.

Good answers will state proposal must include the appointment of the nominee to act in relation to the CVA either as a trustee or supervisor of the implementation of the proposal

and

The nominee must be qualified to act as an Insolvency Practitioner.

- d) Yes, a CVA would help because they can get agreement from all creditors to repay a manageable sum whilst continuing trading.

Yes, a moratorium is available as they are classed as a 'small company' - they satisfy 2 of the 3 conditions.

Again, not a popular answer and candidates showed a lack of knowledge on this subject.

8. Your friend Raj owns and runs a book shop in a small village. He was approached by Linda, a local student, to see if he could help source and provide the study books she needed. She also said that she was not able to pay for them in a one-off payment so agreed that she would pay monthly. Raj had known the girl's family a long time and felt there was little risk in this arrangement. To start with he received a monthly contribution but over the months some payments were missed and other months only a token payment was made. Raj doesn't know what to do and has asked for your advice.

TASK

- a) What are your observations as to whether Raj has followed any pre-action protocol? (5 marks)
- b) What would you suggest Raj should do now? (5 marks)
- c) What is a letter of claim and what should it contain? (5 marks)
- d) Raj now hears that Linda has applied for bankruptcy. What does this mean for Linda and how does this affect the debt due to Raj? (5 marks)

Total 20 marks

Question aims

To test the candidate understanding of good credit control processes, the incorporation of pre-action protocol and the steps to be taken before issuing a County Court Claim for the recovery of debt.

Suggested answer:

- a) It is important to establish that the terms of the arrangement have been set out and agreed by both parties. There is no indication that any formal agreement exists.

How much is the total debt, what is the agreed monthly payment amount?

It is not clear if Raj has actually chased payment, can he provide any evidence of letters, call logs etc where he has chased payment?

Is there a genuine reason / query that is preventing / holding up payment

From the information provided it would appear that no pre-action protocol exists.

- b) In order to do anything about this now it is necessary to contact the student and lay down the terms as you see them and get the student to agree that these are the terms they agreed.

Also find out if there are any disputes/queries as these need to be addressed before any further action can be taken.

Once the amount and terms have been agreed then discussions should take place with regards to the missed payments/arrears and a chasing log made.

After a reasonable amount of time and build up of evidence, if the student is still not making the agreed payments the matter can be progressed to formal recovery.

c) A letter of claim is a formal letter more detailed than a final demand/notice.

It should contain:

- The amount outstanding, what it is for and when it should be paid
- The time within which the debtor has to respond
- 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.

d) Linda will relinquish all assets to an Official Receiver, who will sell these and distribute any proceeds in payment of her outstanding debts. Any debts remaining after this distribution must be written off and are not recoverable by the creditor.

Linda will be registered as a bankrupt, and have restrictions in place during this period, which usually lasts no longer than 12 months. It remains on her credit record for 6 years, however, and will affect her credit rating.

In the case of Raj, if the debt is considered to be a student Loan, then this is not provable in bankruptcy provided it was loaned before 1 September 2004 under Higher Education Act 2004. Therefore any outstanding student loan continues to be due and owing during bankruptcy and after discharge. Raj is therefore able to pursue Linda for the sums due.

A high number of candidates attempted this question with some good results. This is the level of answer the examining team would expect to see for this Level 5 exam. Well done.

---oOo---