



INSOL
INTERNATIONAL



PROGRAMME IN SOUTH AFRICAN INSOLVENCY LAW AND PRACTICE 2023

Summative Assessment (Examination): Paper 2

Date: 28 - 29 November 2023

**Time limit: 24 hours (from 13:00 SAST on Tuesday 28 November to 13:00 SAST on
Wednesday 29 November 2023)**

EXAMINERS

Ms B Bennett

MODERATORS

Ms R Bekker Dr R Brits Dr D Burdette Ms J Calitz Mr Z Cassim Dr E Levenstein

It is imperative that all candidates read and take cognisance of the examination
instructions on the next page.

All candidates are expected to comply with ALL the instructions.

INTRUCTIONS

1. This assessment paper will be made available at **13:00 (1 pm) SAST on Tuesday 28 November 2023** and must be returned / submitted by **13:00 (1 pm) SAST on Wednesday 29 November 2023**. Please note that assessments returned late will not be accepted.
2. All assessments must be submitted electronically in one of the following formats:
 - Microsoft Excel spreadsheet; or
 - Microsoft Word (with the use of tables); or
 - Hand-drafted, scanned and submitted.

As far as possible, please use the Avenir Next or Arial 11-point font when answering this assessment.

3. You must save the document containing your answer using the following format: **[studentID.Paper2Summative]**. An example would be something along the following lines: 202223-336.Paper2Summative. **Where possible, please also include the filename as a footer to each page of the answer to the assessment, or at the top of each page to the assessment.** Do not include your name or any other identifying words in your file name. **Assessments that do not comply with this instruction will be returned to candidates unmarked.**
4. The assessment can be downloaded from your student portal on the INSOL International website. The assessment must likewise be returned via your student portal as per the instructions in the Course Handbook for this course. **If for any reason candidates are unable to access their student portal, the answer script must be returned by e-mail to david.burdette@insol.org.**
5. Due to the high incidence of load shedding currently taking place across South Africa, candidates are required to determine whether any load shedding is scheduled during the examination period and, if so, to make alternative arrangements to write elsewhere, if at all possible.
6. Enquiries during the time that the assessment is written must be directed to David Burdette at **david.burdette@insol.org** or by WhatsApp on +44 7545 773890 or to Brenda Bennett at **brenda.bennett@insol.org** or by WhatsApp on +27 66 2282 010. Enquiries will only be responded to during UK office hours (which are 9 am to 5 pm GMT, or 11 am to 7 pm SAST).
7. While the assessments are open-book assessments, it is important to note that candidates **may not receive any assistance from any person** during the 24 hours that the assessment is written. When submitting the answers candidates will be asked to confirm that the work is their own and that they have worked independently. Please include a statement to this effect in your covering e-mail when returning the assessment.

8. If a candidate is unable to complete this summative assessment (examination), please note that a re-sit examination will only be given if there are exceptional circumstances that prevent a candidate from completing or submitting it (such as illness). Feedback on the final assessment will be provided within four weeks of the paper having been written - please do not enquire about your marks before four weeks have elapsed.

9. Once a candidate's assessment has been uploaded to their student portal (in line with the instructions in the Course Handbook), a confirmatory e-mail will be auto-generated confirming that the assessment has been uploaded. If the confirmatory e-mail is not received within five minutes after uploading the assessment, candidates are requested to first check their junk / spam folders before e-mailing the Course Leader to inform him that the auto-generated e-mail was not received.

QUESTION 1

“ValleyGrove Farms” was founded in February 2012 by David Smith and Maria Ndlovu in the Western Cape province of South Africa. They intended to run the farm as a commercial enterprise, and to this end they registered a private company, **ValleyGrove Farms (Pty) Ltd**, with the Companies and Intellectual Property Commission (CIPC). David Smith and Maria Ndlovu are the only shareholders holding equal shares in the company. Both are directors of the company, with David Smith taking the role of managing director.

ValleyGrove Farms (Pty) Ltd specialised in the cultivation of grapes and the production of fine wines. Over the years, ValleyGrove Farms had enjoyed success but faced severe financial difficulties primarily due to recurring load shedding incidents in South Africa, which disrupted irrigation systems and hampered production. Initially ValleyGrove Farms borrowed money from Capital Bank Ltd, a commercial bank to purchase the farm. Unfortunately, with the impact of the Covid-19 Pandemic in 2020 and recurring load shedding incidents during 2021 which frequency and severity increased in 2022, saw the winery posting huge losses over these years.

Early in 2022, in a final act of desperation, David and Maria approached HarvestFinance for a loan for working capital to continue trading. HarvestFinance granted the loan and secured it by means of a special notarial bond over the bottling plant and equipment situated in the winery. The money provided by HarvestFinance Ltd did not last very long, although most of it was spent on equipment to maintain operations during load shedding-induced delays and improving the farming facilities and equipment which had the effect of increasing the value of the farm itself. Without proper cash flow, ValleyGrove (Pty) Ltd was soon unable to pay its debts as they fell due and fell further and further behind in its mortgage and other repayments to creditors. Fearing that their special notarial bond over the bottling plant would become valueless if ValleyGrove (Pty) Ltd was allowed to continue farming operations, HarvestFinance Ltd instructed its attorneys, Horizon Attorneys in Cape Town, to bring an application in the High Court to have the company, ValleyGrove (Pty) Ltd, wound up. The application to wind up the company was filed with the Registrar of the High Court on 4 September 2022. The High Court granted a final order of liquidation on 18 September 2022.

You are required to draft a **Liquidation and Distribution and / or Contribution Account** together with a **Bank Reconciliation Statement** in this estate, reflecting all the facts furnished hereunder. It is essential that you take note of the following important information when drafting this account:

- You need not prepare a liquidator’s affidavit nor insert dates, addresses, voucher numbers and repetitive headings.
- All interest calculations in respect of a secured claim(s) must be shown and reflected in the relevant Encumbered Asset Account(s).

- In the event of you making assumptions, you are to clarify same by stating why you are of the opinion that insufficient facts have been given or, where in your opinion, the facts given are ambiguous.
- The expected date of confirmation of the account is **17 March 2023**. You are to assume that all final payments will be made on that date.
- The account may be drafted in any order that suits you.
- In the Distribution and / or Contribution Account you are to reflect at least the total claim and the secured, statutory preferent and concurrent portion of each claim separately. You need not provide for a shortfall (deficiency) column in respect of any of the claims and you need not add up unnecessary totals. The Distribution and / or Contribution Account must reflect awards to all classes of creditors, ie secured, preferent and, where applicable, concurrent creditors, as well as the amount upon which contribution is payable (if any) and the amount of contribution payable by each creditor, if applicable.
- **ValleyGrove Farms (Pty) Ltd** is registered as a vendor in terms of the Value-Added Tax Act. Your account must therefore make provision for Value-Added Tax (VAT). Provision must be made in the account for the allocation of VAT in which you show the estate's liability for VAT. You may include this calculation either in the body of the account or by way of a separate schedule.
- **The liquidator** is registered with the South African Revenue Service as a VAT vendor. His / her remuneration must be reflected in accordance with the *Spendiff* decision. These calculations may likewise be contained either in the body of the account or in a separate schedule.
- Where it is stated in the facts that an amount includes VAT, please accept that VAT is indeed included in such amount, even if you are of the opinion that, in practice, VAT would not have been included in such amount. Conversely, if it is stated that VAT is excluded you are to treat it as such and accept that no VAT is payable, even if you are of the opinion that, in practice, VAT would indeed be payable.
- Use only the amounts provided for in the given set of facts. It is unnecessary for you to make up your own amounts for the purposes of this question. You are, however, required to calculate and reflect the statutory fees due to the Master of the High Court and the liquidator's remuneration.
- Please note that some calculators may require that the amounts must be rounded off to the nearest cent. Minor errors made by students in this regard will not be penalised. Likewise, students will be given a leeway of two (2) days each way in regard to the number of days on which interest calculations are made.

[100 Marks]

1. ASSETS REALISED

- 1.1 Proceeds of Portion 8 of the farm "ValleyGrove", Stellenbosch, Western Cape, sold by public auction by Hastings Auctions on 10 November 2022, VAT inclusive **R9,100,000.00**
- 1.2 Proceeds of the following assets sold by public auction by Hastings Auctions at an auction held on 21 November 2022:
- 1.2.1 Bottling plant and equipment sold *ex situ* (these assets were clearly marked and identified from the other movable assets upon the instruction of the liquidator, as they were subject to a special notarial bond), VAT inclusive..... **R3,500,000.00**
- 1.2.2 Substantial inventory of bottled wines manufactured by the winery on the farm "ValleyGrove", VAT inclusive **R230,894.10**
- 1.2.3 Miscellaneous movable assets and office equipment found at the farm "ValleyGrove", VAT inclusive **R43,700.00**
- 1.3 2019 self-propelled Grape Harvester, registration number CA9090 used on the farm for farming operations and sold by private treaty..... **R1,150,000.0**
- 1.4 Proceeds of book debts collected by attorneys Sithole & Partners at the request of the liquidator in the course of winding-up the company (no VAT payable) **R88,405.08**
- 1.5 Proceeds of a quantity of Stella Valley Cabernet grapes harvested shortly after liquidation and sold privately to the local Co-op market..... **R120,876.76**

2. EXPENSES PRESENTED TO THE LIQUIDATOR FOR PAYMENT:

- 2.1 **GuardianSure Bonds Ltd**, for bond of security premium (including provision for renewal of R26,000) (VAT inclusive)..... **R52,000.00**
- 2.2 **Hastings Auctions** for expenses incurred in respect of the auction held on 10 November 2022 (VAT inclusive) **R425,000.00**
- 2.3 The taxed Bill of Costs of **Horizon Attorneys**, the attorneys who acted for the applicant creditor in the application for the winding-up of the company (VAT inclusive) **R18,631.93**
- 2.4 **Western Province Municipality**, for rates and taxes payable on Portion 8 of the Farm ValleyGrove, for approximately four (4) months arrear taxes as well as the amount owing from date of liquidation to date of transfer of the property (there is no VAT payable on this transaction) **R124,897,50**
- 2.5 **GrapeFlow Bottling Solutions**, for repairs made to the bottling plant prior to it being sold by public auction (VAT inclusive) **R28,612.77**

- 2.6 **Wages** paid to general labourers who assisted with harvesting the grapes which were sold after liquidation (there is no VAT on this transaction)..... **R15,000.00**
- 2.7 Cost of advertising general (second) meeting of creditors (VAT inclusive).. **R920.00**
- 2.8 Provision for advertising inspection of account (VAT inclusive)..... **R37.82**
- 2.9 Provision for advertising confirmation of account (VAT inclusive)..... **R37.82**
- 2.10 Provision for advertising destruction of books and records (VAT inclusive) ... **R37.82**
- 2.11 **Trust Bank Ltd**, bank charges (including a provision of R150.00) payable on the estate banking account (VAT inclusive)..... **R400.00**
- 2.12 Postage and petties allowed by the Master (VAT inclusive) **R1,030.00**
- 2.13 **Sithole & Partners**, professional fee for collecting book debts on behalf of the liquidator (VAT inclusive)..... **R6,914.10**
- 2.14 **Hastings Auctions**, commission and expenses incurred in respect of the movable assets referred to in 1.2.1, 1.2.2 and 1.2.3 above (assets sold by public auction on 21 November 2022) (VAT inclusive)..... **R35,118.19**

3. CLAIMS PROVED AGAINST THE ESTATE:

- 3.1 **Capital Bank Ltd**, for moneys lent and advanced **R8,946,765.32**

This claim is secured by a first mortgage bond registered over Portion 8 of the farm "ValleyGrove Farms". Interest on this claim is payable at the rate of 14% per annum from date of liquidation to date of payment. This creditor relied on its security.

- 3.2 **Harvest Finance Ltd**, for moneys lent and advanced by way of a working capital loan **R3,203,046.89**

This claim is secured by a special notarial bond registered over specified assets in terms of section 1 of the Security by Means of Movable Property Act 57 of 1993 (see the assets mentioned in 1.2.1 above). You may accept that the assets mentioned in 1.2.1 above have all been specifically described and identified as being subject to the special notarial bond. Interest on this claim is payable at the rate of 16,5% per annum, from date of liquidation to date of payment. This creditor did not rely on its security.

- 3.3 **Vinotech Supplies Ltd**, for goods sold and delivered **R17,410.61**

3.4 **AgriTech Finance**, for moneys lent and advanced **R1,261,052.55**

This claim is secured by an instalment sale transaction over the 2019 Grape Harvester registration number CA9090 in favour of AgriTech Finance. This claim attracts interest at the rate of 18,75% per annum. This creditor did not rely on its security.

3.5 **South African Revenue Service**, for arrear VAT and Income Tax owing by the company at date of liquidation **R137,186.64**

This amount is made up as follows:

Arrear VAT payments prior to liquidation	R 119,345.02
Arrear Income Tax payments prior to liquidation	R 17,841.62

3.6 **Winecraft Essentials Ltd**, for glass bottles and bottling equipment for the winery **R3,668.29**

3.7 **Thabo Moeng**, manager of ValleyGrove Farm (Pty) Ltd, for arrear salary and leave pay owing before date of liquidation..... **R54,000.00**

This creditor's claim is made up as follows:

Salary for the months of:

May 2022	R12,000.00
June 2022	R12,000.00
July 2022	R12,000.00
August 2022	R12,000.00

Leave pay:

Leave pay owing for 2022	R 6,000.00
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3.8 **David Smith**, managing director of the company, for arrear salary owing at date of liquidation..... **R100,000.00**

This creditor's claim is made up as follows:

Salary for the months of:

May 2022	R25,000.00
June 2022	R25,000.00
July 2022	R25,000.00
August 2022	R25,000.00

3.9 **Maria Ndlovu**, director of the company, for arrear salary owing at date of liquidation
**R72,000.00**

This creditor's claim is made up as follows:

Salary for the months of:

May 2022	R18,000.00
June 2022	R18,000.00
July 2022	R18,000.00
August 2022	R18,000.00

3.10 **Sindiwe Mthembu**, an employee of the company, for arrear salary owing at date of liquidation.....**R12,000.00**

This creditor's claim is made up as follows:

Salary for the months of:

May 2022	R3,000.00
June 2022	R3,000.00
July 2022	R3,000.00
August 2022	R3,000.00

4. BANK STATEMENTS

The bank statements (of the estate banking account) in the hands of the liquidator reflect the following receipts and payments (for the purposes of this question please assume that no interest was earned on credit balances).

ITEM NO	PAYMENTS	RECEIPTS
1.1 & 2.2, 2.4		8,550,102.50
1.2 & 2.5, 2.14		3,438,823.82
1.3		1,150,000.00
1.4 & 2.13		81,490.98
1.5 & 2.6		105,876.76
2.1	26,000.00	
2.3	18,631.93	
2.7	920.00	
2.8	37.82	
2.9	37.82	
2.10	250.00	

Bank balance as at date when accounts were made up: **R13,552,455.81**
