



SUMMATIVE (FORMAL) ASSESSMENT: MODULE 9

ETHICS AND PROFESSIONAL PRACTICE

This is the **summative (formal) assessment** for **Module 9** of this course and is compulsory for all candidates who **selected this module as one of their elective modules**.

The mark awarded for this assessment will determine your final mark for Module 9. In order to pass this module, you need to obtain a mark of 50% or more for this assessment.

INSTRUCTIONS FOR COMPLETION AND SUBMISSION OF ASSESSMENT

Please read the following instructions very carefully before submitting / uploading your assessment on the Foundation Certificate web pages.

1. You must use this document for the answering of the assessment for this module. The answers to each question must be completed using this document with the answers populated under each question.
2. All assessments must be submitted electronically in **Microsoft Word format**, using a standard A4 size page and an 11-point Arial font. This document has been set up with these parameters – **please do not change the document settings in any way. DO NOT** submit your assessment in PDF format as it will be returned to you unmarked.
3. No limit has been set for the length of your answers to the questions. However, please be guided by the mark allocation for each question. More often than not, one fact / statement will earn one mark (unless it is obvious from the question that this is not the case).
4. You must save this document using the following format: **[studentID.assessment9]**. An example would be something along the following lines: 202122-336.assessment9. **Please also include the filename as a footer to each page of the assessment** (this has been pre-populated for you, merely replace the words “studentnumber” with the student number allocated to you). 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.**
5. Before you will be allowed to upload / submit your assessment via the portal on the Foundation Certificate web pages, you will be required to confirm / certify that you are the person who completed the assessment and that the work submitted is your own, original work. Please see the part of the Course Handbook that deals with plagiarism and dishonesty in the submission of assessments. **Please note that copying and pasting from the Guidance Text into your answer is prohibited and constitutes plagiarism. You must write the answers to the questions in your own words.**
6. The final submission date for this assessment is **31 July 2022**. The assessment submission portal will close at **23:00 (11 pm) BST (GMT +1) on 31 July 2022**. No submissions can be made after the portal has closed and no further uploading of documents will be allowed, no matter the circumstances.
7. Prior to being populated with your answers, this assessment consists of **8 pages**.

ANSWER ALL THE QUESTIONS

Commented [JL1]: TOTAL 47 out of 50
Well done!

QUESTION 1 (multiple-choice questions) [10 marks in total]

Commented [JL2]: 10 out of 10

Questions 1.1. – 1.10. are multiple-choice questions designed to assess your ability to think critically about the subject. Please read each question carefully before reading the answer options. Be aware that some questions may seem to have more than one right answer, but you are to look for the one that makes the most sense and is the most correct. When you have a clear idea of the question, find your answer and **mark your selection on the answer sheet by highlighting the relevant paragraph in yellow**. Select only **ONE** answer. Candidates who select more than one answer will receive no mark for that specific question.

Question 1.1

Please choose the **most correct answer** from the options below.

INSOL International's *Ethical Principles for Insolvency Professionals* –

- (a) are mandatory and apply to all its members.
- (b) creates a set of rules which all jurisdictions have to incorporate into their insolvency frameworks.
- (c) creates a set of rules by which stakeholders and the public in most jurisdictions would be able to determine whether insolvency practitioners are acting in accordance with ethical principles.
- (d) creates a set of best practice principles to inform and educate insolvency practitioners and stakeholders by providing ethical and professional guidance on issues of importance.**

Question 1.2

The “Enlightened Creditor Value” approach to insolvency proposes the following with regard to the protection of competing interests in insolvency proceedings:

- (a) Creditors' interests are of paramount importance and as such only these interests should be protected in insolvency.
- (b) The interests of stakeholders should be regarded in the same manner as those of creditors.
- (c) Creditors' interests are of paramount importance, however, the interests of other stakeholders should also be considered where this would be in the creditors' interests.**
- (d) Only the shareholders of the company and the creditors of the company should be protected by the insolvency law (and in that order).

Question 1.3

All insolvency professionals are fiduciaries.

- (a) True
- (b) False**

Question 1.4

Being truthful and being honest is the same thing.

(a) True

(b) False

Question 1.5

Select the **correct** answer:

Tony has been appointed as a liquidator of Company X. Company X has several major creditors, including ABC Supplies. Tony owns 30% of the shares in ABC supplies.

This situation is an example of a / an _____ threat.

(a) self-review

(b) self-interest

(c) advocacy

(d) intimidation

Question 1.6

A lack of independence and impartiality due to a prohibited relationship with a stakeholder can always be remedied by disclosing the relevant relationship to the relevant parties and issuing a declaration of independence.

(a) True

(b) False

Question 1.7

Select the **correct** answer:

Thembi is a well-known insolvency practitioner and is often sought out for her knowledge and expertise. She currently has ten ongoing insolvency matters (most of them quite complex) and has been feeling somewhat overwhelmed. Due to her impressive *curriculum vitae* she is contacted by a very large designer company in distress inquiring whether she would be able to take an appointment as an administrator. Thembi should:

(a) Accept the appointment as it will boost her career even further.

(b) Accept the appointment as she can get one of her junior associates to take over all her other cases.

(c) Accept the appointment because as a professional she will have the ability to give all of the cases she is involved in some attention, although some of them will now only be overseen by her.

(d) Refuse the appointment as she will not be able to give all of the cases she is involved in the requisite level of attention.

Question 1.8

Select the **correct** answer:

Rajesh has been appointed as a new associate at the firm where he is employed. In his new role he has to meet certain targets in relation to the fees he earns for taking appointments. Rajesh is currently appointed as a liquidator for a small company. He realises that he will not meet the firm's target for fees. The most ethical thing for Rajesh to do would be to:

(a) Call a creditors' meeting requesting an adjustment to his agreed fees due to unforeseen circumstances.

(b) Ask his administrative assistant to invoice the estate for the use of the firm's conference venue for meetings held there at a 50% increased fee.

(c) Carry out his duties in a timely fashion and complete the appointment efficiently and without undue delay, only invoicing for work properly performed.

(d) Ask his administrative assistant to double check all the calculations in the case file and then bill the hours as part of his invoice.

Question 1.9

Select the **most correct answer** from the options below.

An insolvency practitioner using a percentage-based fee calculation method for determining the amount of remuneration owed to him, will receive a fair amount of remuneration.

(a) This statement is true since jurisdictions always allow for an adjustment of fees where it is necessary.

(b) This statement is false since the practitioner might have carried out more work and invested more resources than the value of the realisable or distributable assets.

(c) This statement is false since the practitioner will always receive more remuneration than what is reflected in the work carried out.

(d) This statement is false since the only way to receive a fair amount of remuneration is to calculate the remuneration on an hourly rate.

Question 1.10

Select the **most correct answer** from the options below.

Fathima has just completed Module 9 of INSOL International's Foundation Certificate. She works as a junior insolvency practitioner at a large firm. Her firm is contemplating the acquisition of a new information technology system to help ease the administrative burdens of the practitioners at the firm. This new system will digitise all of the documents in relation to

insolvency appointments. All the practitioners and administrative personnel employed by the firm will have access to these files as long as they have access to an internet connection. Fathima should advise someone in the office to implement procedures and policies on _____ in relation to this proposed new system.

- (a) Quality control
- (b) Risk management**
- (c) Compliance management
- (d) Fidelity insurance

QUESTION 2 (direct questions) [10 marks]

Commented [JL3]: 9 out of 10

Question 2.1 [maximum 2 marks]

The ethical principle of integrity implies "fair dealing". How would this apply in an insolvency context?

Integrity implies fair dealing, honesty, straightforwardness, and truthfulness. This is stipulated in Principle 1 of the INSOL International' Ethical Principles for Insolvency Professionals. Specifically, fair dealing means **treating one fairly and equitably**.

In the context of insolvency, the insolvency practitioner can deal fairly if s/he ensures the **equitable treatment of all involved and treats like stakeholders alike**. Of course, one should note that it is not possible for the practitioner to treat all stakeholders equally as certain parties - eg creditors - receive a more favourable position in the legal hierarchy as established by the national legislator.

According to this principle, in an insolvency context, the insolvency practitioner treats unsecured creditors alike, employees alike, secured creditors alike, etc... depending on their categories within the hierarchical **system**.

Commented [JL4]: 2

Question 2.2 [maximum 4 marks]

Briefly explain the two-pronged nature of the duty to act with independence and impartiality.

The two-pronged nature of the duty to act independently and impartially lies in how the practitioner acts (ie how it is in **fact**) and how it is **perceived**.

A practitioner is independent in **fact** if it is factually free from any factors or interests that could influence its opinion and judgement. There should be an environment in which s/he has no professional or personal relationship with the case and no interests, either directly or indirectly, that will compromise or adversely affect, impair, or threaten the integrity and ability of making decisions.

A practitioner is **perceived** to be independent if it also avoids the circumstance that could lead a reasonable third person to think that the practitioner's impartiality, integrity, and independence is compromised. Perception is important, as it lays one of the pillars for the stakeholders to trust the practitioners and rely on **them**.

Commented [JL5]: 4

Question 2.3 [maximum 4 marks]

Contingency fee arrangements have been a controversial issue in relation to insolvency practitioners and their remuneration. Briefly reflect on this practice and the possible ethical issues in relation to this method of calculation.

Another term for **contingency fees** are **successful** or **conditional fees**. These are agreements which determine that the practitioner would be entitled to receive remuneration based on a specific outcome (usually for stakeholders) or when a specific condition is met. An example is the successful implementation of a restructuring plan.

The **controversy** around this type of fee arrangement is that the conditions and outcomes are those that the practitioners, as fiduciaries, should aim to achieve regardless of the fee and should form part of their responsibility. Another – linked – issue is that the practitioners focus remains on that particular outcome and responsibility which will *reward* them with the fee. This would deviate the practitioner from holistic **approach**.

Commented [JL6]: 3
When would a contingency fee be ok?

QUESTION 3 (essay-type questions) [15 marks in total]

Commented [JL7]: 13 out of 15

Question 3.1 [maximum 8 marks]

The ethical principle that requires insolvency practitioners to act with and maintain professional and technical competence is often linked to the duty of care. Elaborate on this duty and on the yardstick that would be used when determining whether a practitioner acted with the necessary care, skill and diligence.

The third principle of the INSOL International' Ethical Principles for Insolvency Professionals lays down the principle that practitioners should maintain an acceptable level of **professional or technical competency** which may be achieved by staying on track with the legislative and regulatory changes (law-related), by undertaking continuing professional education even where it is not required (education-related), and by undertaking sufficient case work to remain experienced (experience-related). As such, the practitioners should be sufficiently and appropriately resourced, experienced, and educated to deal with their cases. An alternative would be to call specialists or employ further resources as necessary. Conversely, if they accept a case to which they cannot devote the necessary factors that are required for delivering the best results for the stakeholders, their profession would be brought into a disrepute.

This principle is a response to the stakeholders' general expectations that practitioners are experts in the field and have the necessary technical competences and experiences to perform their duties. This requires a high level of self-realisation, meaning that practitioners know their own capacities and limitations concerning their knowledge, skills, and experiences. When the area in which they lack the necessary expertise is detected, it is crucial that the practitioners educate themselves. For example, if the legislator adopts a new law, the practitioner should follow the necessary courses or join conferences to stay up to date with the continuing changes in the law. To provide for sufficient room to conduct the tasks accordingly, the practitioner should not accept more cases if it is already under a heavy case load.

The **duty of care**, skill, and diligence are closely interlinked with this principle. One should note that the duty of care is **not fiduciary in nature**, however it is crucial in insolvency situations as the debtor is already struggling with financial distress. Moreover, the duty is closely linked to the fiduciary duties, as one can hardly say that the practitioner acted in the best interest of the beneficiaries and in line with the fiduciary duties or if it acted negligently. This means that the practitioner should not act incompetently, carelessly, and with recklessness when dealing with the cases. It can therefore be concluded that if a practitioner does not act in line with the principle, and fails to perform its duties, it **might be in breach of the duty** to act with care, skills and diligence. This could even lead to them being held personally liable for any loss due to their actions or omissions.

To assess whether this is the case, the **yardstick** – which is a two-fold test – is as follows. **The objective test**: the practitioner's conduct should be measured against that of a

reasonable practitioner, meaning that it should be determined whether or not it acted with the same degree of care, skill, and diligence that may be reasonably expected of a reasonable practitioner in the same circumstances, also considering the personal attributes and qualifications. **The subjective assessment** should also be applied as the degree of expertise and level of experiences vary, the subjective elements of the test are important and need to be applied on a **case-by-case basis**.

As such, if a practitioner does not act in accordance with the principle to act with, and maintain, professional and technical competence, it might breach the duty to act with care, skills and **diligence**.

Commented [JL8]: A complete answer would have referenced the UNCITRAL legislative guidance on the topic and case law 6

Question 3.2 [maximum 7 marks]

As insolvency appointments often involve complex legal issues, it is common practice for insolvency practitioners to rely on the advice and services of legal professionals. What ethical considerations should be borne in mind, especially regarding the fees of these legal professionals?

This question concerns the fifth principle of INSOL International' Ethical Principles for Insolvency Professionals, regarding remuneration.

Insolvency practitioners (IP) often use the recommendations of a legal professional for their expertise in a certain complex legal matters. Of course, these legal professionals need to be compensated for their services.

According to the *Kao Chai-Chua Linda v Fong Wai Lyn Carolyn* [2015] SGHC 260, [260] 1 SLR 21, 44 [Singapore] case, there are different ways to pay the legal professionals, eg as **disbursements or third-party costs**.

The legal professional can claim the costs as a part of the IP's disbursements, which is the sum paid by a practitioner or its firm to third parties, which in this case is the legal professional, or a recharge or allocation of costs incurred by the practitioner or its firm which is charged to the estate. The burden is on the IP who is responsible for the payment. According to the *Re Korda; in the matter of Stockford Ltd* (2004) 140 FCR 424, 443 [Australia] case, the IP should use its **commercial judgement** when hiring the legal professionals and **monitor prudently the fees** claimed by the professionals. As such, the IP must consider whether the bill is reasonable and appropriate.

Another option is to bill the costs separately and directly to the debtor company who will have to pay the legal professional and the IP each individually. Third party costs are defined as sums paid directly from the estate to a third party supplier which invoices the estate. In this scenario, it is even more important to monitor the fees and to scrutinize the bills of the professional. The practitioner carries the burden to justify claims for work performed when there are several professionals involved regarding the same matter. This may justify the seemingly duplicative administrative costs. If the practitioner can prove that the service provided is not "duplicative" work done, the bills may be justified. Again, this burden rests on the practitioner, see *Liquidators of Dovechem Holdings Pte Ltd v Dovechem Holdings Pte Ltd* [2015] 4 SLR 955 [Singapore] case.

There are certain **codes of conduct** regarding the engagement of legal professionals in cases where the practitioner would need to rely on the guidance and expert advice of legal professionals when the practitioner itself does not have the specific legal knowledge or might not be trained in law.

An example of such a code is the **Insolvency Code of Ethics by the Institute for Chartered Accountants of England and Wales** (hereinafter referred to as "ICAEW"). The ICAEW provides guidance on dealing with the specialist advice or work and services and stipulates that the IP, when it wishes to rely on such advice, should **evaluate whether the advice is warranted**. The code also requires the IP to **document the reasons** for choosing a specific service or service provider for justification purposes. Hence, the practitioner should

be able to explain and justify why it chose the specific professional and prove that the services were necessary.

Moreover, if there is a certain professional or personal relationship between the practitioner and the professional, which could create the perception that the practitioner is not independent from the legal professional, there should be a **full disclosure** of the relationship to the stakeholders.

A process should take place for evaluating whether the service provider's advice and work will be the **best value for the creditors**, by considering the following elements: (1) the costs of the work provided by the professional, (2) the authorisations given to the professional, and (3) the ethical and professional standards applicable to the professional. The practitioner should be able to provide the **details of the process** that was followed in ensuring that the service provider was giving the service that would be of the best value for the **beneficiaries**.

Commented [JL9]: 7

QUESTION 4 (fact-based application-type question) [15 marks in total]

Commented [JL10]: 15 out of 15

WeBuild Ltd is a private company registered in Eurafriclia. The company specialises in construction and property development and is well known in the area where it conducts its business. Mr B Inlaw, Dr I Dontcare and Mrs I Relevant are the directors of the company. The company has ten shareholders, with Mr B Inlaw and Dr I Dontcare also holding shares in the company.

The company traded profitably for the last 10 years but recently started to experience financial difficulties. One of the main reasons for the financial decline is the fact that several of the company's employees have instituted a class action claim against WeBuild for workplace-related injuries due to faulty machinery. This also resulted in bad publicity that led to a decline in contracts. The directors of the company were made aware of the issues relating to the machinery but chose not to take any action to remedy the situation. When the company's financial position started to decline the directors continued to trade as if nothing was amiss and even made several large payments to themselves by way of performance bonuses. When they received a letter of demand from the company's major secured creditor, ABC Bank, the directors decided to call a shareholders' meeting to discuss the company's options.

Present at this meeting were the shareholders, the directors and Mr Relation, a lawyer, to provide them with information and advice in relation to their options. Some of the shareholders recognised Mr Relation as Mr B Inlaw's brother-in-law and godfather to his daughter. During the meeting, Mr Relation suggests that the company enter into a voluntary administration procedure. Mr B Inlaw suggests that the company appoint Mr Relation as administrator. He accepts the appointment, ensuring that he discloses his relationship with Mr B Inlaw and says that he will declare that he believes that he will still be able to act with the required independence and impartiality.

After the meeting adjourns, Mr B Inlaw requests the other directors and Mr Relation to stay behind for a brief "planning" meeting. During this subsequent meeting the directors inform Mr Relation that they are concerned about their personal liability for breach of duty. Moreover, they are worried that they might land in hot water due to their decision to continue trading when the company was clearly in dire financial straits. Mr Relation assures them that his focus will not be on them but on trying to rescue the company.

In the weeks that follow, Mr Relation conducts a superficial investigation into the affairs of the company and the circumstances leading to the financial difficulties of the company. He relies on detailed reports drafted by Mr B Inlaw regarding the company's business and drafts a strategic plan for recovery based on his investigation and the reports he received.

At a meeting of creditors to consider the plan, Mr Relation states that he has found no evidence of any wrongdoing or maladministration by the company's directors. Mrs Keeneye, a lawyer attending the meeting on behalf of ABC Bank, the major secured creditor, recognises Mr Relation from a television interview where Mr Relation expressed the opinion that banks should be more accommodating in restructuring proceedings and that he thinks that the interests of lower ranking creditors should sometimes outweigh "big money" (referring to financial institutions). She immediately feels uncomfortable with his appointment as administrator.

Several months later the administration fails due to a "lack of funding" to finance the rescue. The administration is subsequently converted to liquidation proceedings and Mr Relation is appointed as the liquidator.

INSTRUCTIONS

There are at least THREE major ethical issues in this factual scenario.

You are required to identify these ethical issues and explain in detail why they are in fact ethical issues. Your answer should include reference to the ethical principles and the commentary thereon. Where appropriate and suitable, you should also endeavour to elaborate on possible remedies or safeguarding mechanisms to minimise or remove the ethical threats.

You may also make use of case law and secondary sources to substantiate your answer.

This case demonstrates quite a few (ethical) issues. This essay will outline the issues that may potentially lead to ethical questions and may be in conflict with certain principles listed in INSOL International' Ethical Principles for Insolvency Professionals. It will then discuss the ethical principles involved (including related caselaw) and apply to each individual issue as well as provide potential remedies and safeguards if any.

Issues: Mr. Relation poses quite a few – interlinked – problems with regard to ethical and professional practice, a few are outlined below. He is present during the shareholders' meeting in order to provide advice to shareholders, and after recommending the shareholders to enter into a voluntary administration, he is appointed as the administrator (**issue 1**). He also happens to be Mr. B Inlaw's – who is both a shareholder and a director of WeBuild Ltd – brother in law and the godfather of his daughter (**issue 2**). An important detail is that Mr. B Inlaw was advocating for Mr. Relation's appointment as administrator during the shareholders' meeting. Moreover, after his appointment, Mr. Relation and the directors had a private meeting regarding their possible director's liability, as they continued business and rewarded themselves with performance bonuses despite the serious financial difficulties they were well aware of. This meeting ended with the reassurance of Mr. Relation to the directors that they will not be affected. Mr. Relation conducted a "superficial" investigation, relying on – hold your breath – Mr. Inlaw's documents. He then proposed a plan, which eventually failed due to a lack of funding (**issue 3**). Previously, Ms. Keeneye (the lawyer of WeBuild Ltd. major creditor ABC Bank) heard Mr. Relation's asseverations during an interview and became concerned that his beliefs might interfere with his tasks (**issue 4**). Finally, although the administration failed and was converted into a liquidation procedure, Mr. Relation was appointed as administrator (**issue 5**, linked to issue 1).

Issue 1: The issue is Mr. Relation's pre-appointment involvement in the shareholder's meeting. The principle concerned is **Principle 2 – Objectivity, Independence, and Impartiality**. This principle will be discussed in further detail below (when dealing with issue 2). Caselaw precedence has shown that **pre-appointment involvement** of the practitioner may cause serious doubts with regard to its level of

independence and impartiality. However, it is common practice that practitioners provide prior consultations to the shareholders, and it may even be regarded as a crucial part of the insolvency process. The scope of such consultations can vary case-by-case, but it is generally accepted that there should not be a material engagement, and the recommendations should be restricted to the company's financial position, solvency, effects of a potential insolvency or alternatives. As such, not all forms of prior contact could suggest a lack of independence. This is confirmed in the *Re Korda, Ten Network Holdings Ltd (Admn Apptd) (Recs and Mgrs Apptd) [2017] FCA 914 [Australia]* case. There it was suggested that directors contemplating insolvency should be encouraged to work with appropriately-qualified professionals early on as long as there are sufficient safeguards to avoid the existence or appearance of a conflict. Interestingly, it was important for the court in the *Korda* case that the practitioner should not have met any of the board members or management of the debtor-company.

Applying the rules to the facts of our case, Mr. Relation's presence in the shareholders' meeting advising them to enter into an administration process, and subsequently having a private meeting with the directors regarding their liability could cast serious doubts on his impartiality and independence. Although such early intervention is encouraged in caselaw, Mr. Relation's involvement seems to have breached the limits of acceptable prior consultations. This is even more exacerbated by issue 2 (see below).

Potential safeguards are to set out the nature and the extent of the prior consultations in a disclosure statement for improved transparency, and to properly inform that Mr. Relation could become an actual administrator if alternatives fail. However, in this case, none of these safeguards were put in place.

Issue 2: Another issue under the same **Principle 2 – Objectivity, Independence, and Impartiality** is Mr. Relation's relationship with Mr. B Inlaw. According to the principle, the practitioner will only be able to exercise its discretion and powers in the best interests of all stakeholders if it is independent and impartial, which ensures that no bias or conflict of interest is allowed. The independence-test is two-fold: the practitioner should be **independent in fact and should also be perceived as independent**. The practitioner is independent in fact if it avoids all personal and professional relationships that may influence, impair, or threaten its ability to make independent and impartial decisions. Independence in perception is achieved if circumstances in which a reasonably informed third party concludes that the practitioner's impartiality is compromised do not arise.

Mr. Relation is Mr. B Inlaw's brother in law and the godfather of Mr. Inlaw's daughter. Simply put, Mr. Relation is not independent in fact due to its personal association with Mr. B Inlaw.

Mr. Relation did attempt to address any potential threats to independence and impartiality by providing a disclosure of the relationship and a declaration of independence (which should include the nature of the relationship and the level of interaction). However, a disclosure is not an absolute solution, see *Commonwealth Bank of Australia v Irving [1996] 65 FCR 291 [Australia]* case, where disclosure did not influence the outcome that there was a lack of independence. Nor is disclosure a guarantee that the process will actually be conducted impartially and independently, which, looking at the facts, seems to be the case. The facts that Mr. Inlaw was advocating for Mr. Relation's appointment as administrator during the shareholders' meeting and that they held a private meeting in which they discussed that Mr Inlaw will not be targeted during the investigation, are testament to the lack of independence and a high degree of influence of Inlaw on Relation due to their relationship.

Issue 3: Mr. Relation's superficial investigation relying on Mr. Inlaw's documents support the lack of independence (see issue 2 above) but also gives rise to another ethical issue. The principle concerned is **Principle 3 – Professional and Technical Competence**. This principle is linked to the **duty of care, skill, and diligence**. The practitioner should not act recklessly with regard to the affairs of the company and its property. A practitioner who fails to perform its tasks and duties in a meticulous manner may be in breach of duty and may even be held liable for any loss. To assess whether the duty is breached, due to

professional negligence, a two-fold test is applied, see *Re Charnley Davies Ltd 1990 BCC 605*. The practitioner should be evaluated based on the conduct of an ordinary, skilled, reasonable practitioner, which means that the actions should be assessed whether it acted with the same degree of care, skill, and diligence that may be reasonably expected from a careful and reasonable practitioner in the same circumstances, with regard to the personal attributes and qualifications. It is important to note that not all practitioners are alike and have varying degrees of experience and training, so this test should also be applied subjectively on a case-by-case basis.

Mr. Relation conducted a “superficial” investigation into the affairs of WeBuild Ltd and the circumstances leading to the financial difficulties of the company. He relied on Mr. Inlaw’s documents and reports regarding the business. Based on these reports he drafted a plan, which he proposed to the creditors’ meeting. The plan failed due to a lack of funding and the process was turned into a liquidation procedure. Another prudent and reasonable practitioner would have not made the same error and would have not acted with such professional negligence. At a minimum, an acceptable level of professionalism would be to investigate with care and look into independent reports. The fact that the administration failed due to lack of funding is also proof that the process was not carefully conducted with professional and technical competence.

Issue 4: Ms. Keeneye has heard Mr. Relation’s opinions during an interview and became concerned about the conduct of his tasks. The principle concerned is **Principle 1 – Integrity** which implies straightforwardness, honesty, and truthfulness by adherence to **high moral and ethical principles** in all aspects of the practitioner’s professional practice. Morals are the person’s personal beliefs regarding right or wrong, and involves their societal and cultural upbringing, religion, and education. Ethics refer to the specific rules that apply to a specific group of people – usually in a professional environment – in order to behave correctly and up to acceptable standards of conduct. However, conflicts could arise between one’s morals or personal set of beliefs and one’s profession. In such cases, professional standards always prevail over own beliefs.

During an interview, Mr. Relation has expressed his opinion that banks should be more accommodating in restructuring proceedings and that other lower ranking interests should outweigh the bank’s interests. This is obviously not comforting news for the ABC Bank’s lawyer, Ms. Keeneye. This opinion is a part of the personal moral standards of Mr. Relation, however the professional ethical standards of Mr. Relation as the practitioner should prevail. The practitioner has to treat stakeholders according to a (hierarchical) system that is set up by national law and should treat like stakeholders alike under the principle of fair dealing. As such, he cannot act solely based on his own set of beliefs and personal opinions.

Issue 5: A final issue is the appointment of Mr. Relation as the liquidator. This issue is linked to issue 1 (see above) and concerns **subsequent appointments** under the same **Principle 2 – Objectivity, Independence, and Impartiality**. There are several threats linked to subsequent appointments, such as lack of **self-review** and risk of **self-interest**. No self-review risk occurs when the practitioner is not able to appropriately evaluate the results of the previous decisions and services it provided as it was involved in prior decision-making and cannot objectively and critically look into the issues and detect the mistakes. Self-interests concern the remuneration of the practitioner, as it will be remunerated twice for work in relation to the same company which might influence its judgement or behaviour. For example, the practitioner as an administrator might not put an effort in rescuing the business as it aims to be appointed as a liquidator once the process turns into a liquidation so that it can be paid again. It is for these risks that certain jurisdictions prohibited subsequent appointments.

In casu, due to the carelessness and professional negligence of Mr Relation, the plan failed and turned into a liquidation. He was then appointed as the liquidator. Whether or not it was his intention since the beginning is arguable, but there is no question that this outcome played perfectly well in favour of Mr Relation, as he will now be remunerated twice. There

are also high chances that he will not be able to conduct an appropriate self-review to detect the mistakes he made previously. As such, this scenario indicates a serious ethical **issue**.

Commented [JL11]: An excellent answer
15

*** End of Assessment ***