



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: 202223-336.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 2023. The assessment submission portal will close at 23:00 (11 pm) BST (GMT +1) on 31 July 2023. 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**

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

**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

**Unethical behaviour by insolvency practitioners can undermine the entire insolvency framework of a country due to a lack of trust and confidence in the insolvency profession.**

(a) **True**

(b) **False**

Question 1.4

**Being an officer of the court requires a person to act with integrity and to not mislead the court in acting on behalf of a client. An officer of the court recognises the importance of dishonesty in the justice system and as such would act in a manner which would further the administration of justice to the best of their ability.**

(a) **True**

(b) **False**

Commented [LJ3]: b

Question 1.5

**Select the correct answer:**

**Ho has been appointed as a liquidator of Company X. Company X has several major creditors, including ABC Bank. A year prior to the liquidation of the Company, Ho was acting in an advisory capacity for ABC Bank in litigation against Company X where he attempted to advance ABC's position as a creditor.**

**This situation is an example of a / an \_\_\_\_\_ threat.**

(a) **self-review**

(b) **self-interest**

**(c) advocacy**

**(d) intimidation**

Question 1.6

**John was appointed as the liquidator of DebtCO. One of DebtCO's suppliers and major unsecured creditors, S. Panesar, is very friendly towards John. Mr Panesar has heard in passing that John enjoys sport and managed to procure tickets to several events in the recent Tokyo 2020 Olympic Games, which John accepted. John realises that this will be deemed questionable behaviour and he fears that Mr Panesar will make the offer and acceptance of the gift public. This would certainly create a threat to his perceived objectivity.**

**This situation is an example of a / an \_\_\_\_\_ threat.**

**(a) familiarity**

**(b) self-review**

**(c) advocacy**

**(d) intimidation**

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 fixed fee calculation method for determining the amount of remuneration owed to him, will receive a fair amount of remuneration.**

Please choose the most correct answer.

- (a) This statement is false since the practitioner might have carried out more work and invested more resources than is reflected in the fee.**
- (b) This statement is true since jurisdictions always allows for an adjustment of fees where it is necessary.**
- (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.

**Timothy has been appointed as the judicial manager of a large public company. As a result of his appointment, he has been privy to confidential information regarding the company and its stakeholders. Timothy is aware that there is a duty on him to maintain confidential information and is very careful when he speaks to the press and members of the public. However, he often discloses work related information including sensitive information to his brother-in-law when they see one another over weekends and Timothy believes the information will be kept confidential by him.**

Please select the statement that best describes Timothy's situation.

- (a) Timothy is not in breach of his duty to confidentiality. He maintains confidentiality when engaging with the press and public. His disclosure to his brother-in-law poses no risk as he trusts him to keep the information to himself.
- (b) Timothy is in breach of his duty to act in the best interests of the beneficiaries of his duties. Timothy's disclosure of confidential information to his brother-in-law will pose a conflict of interest and create bias in the exercise of his duties.
- (c) Timothy is in breach of his duty to confidentiality. As an IP he should maintain confidentiality even in a social environment and should be alert to the possibility of inadvertent disclosure to an immediate family member like his brother-in-law.
- (d) Timothy is not in breach of his duty to act with good faith. He maintains confidentiality when engaging with the press and public. His disclosure to his brother-in-law poses no risk as disclosures to immediate family members are not regarded as threats to compliance.

QUESTION 2 (direct questions) [10 marks]

Commented [LJ4]: 6/10

Question 2.1 [maximum 3 marks]

**What are the most common elements associated with the existence of a fiduciary relationship generally?**

*A fiduciary relationship is one where the individual who is named as a fiduciary undertakes to act on behalf of another person and has discretion and the power over the interests of the other. Additionally, vulnerability of the other is a common indicators for the existence of a fiduciary relationship*

Commented [LJ5]: 3/3



Question 2.2 [maximum 4 marks]

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

*An IP will only be able to exercise his discretion and powers for the best interest of beneficiaries if he is independent and impartial, so that the IP does not allow bias, conflict of interest or the influence of others to go beyond his professional capacity.*

*Independence and impartiality creates trust between the IP and the stakeholders and beneficiaries, and without trust, which can be caused by the IP incurring bias, or lack independence, then they will believe that the IP is not acting in their best interest. Where there is a rescue operation, lack of trust could lead to stakeholders walking away and discontinuing their involvement with the IP, which can impact the success of implementing a rescue plan.*

*To show independence and impartiality the IP will often have to disclose any relationships with stakeholders and the nature of the relationships and would be expected to still perform their duties as expected, independently and impartially.*

**Commented [LJ6]:** This question required a discussion of independence in fact and independence in mind - that is factual independence and perceived independence.  
0/4

Question 2.3 [maximum 3 marks]

**Explain the difference between professional and fidelity insurance and elaborate on why it is of particular importance for Insolvency Practitioners to obtain this type of insurance.**

*Indemnity or professional insurance covers risk against stakeholders instituting action against the IP for acting negligently. Fidelity insurance protects stakeholders in the event of the IP acting dishonestly or de-frauding the estate. It is important to obtain this insurance as it both protects themselves as IPS as well as stakeholders in the estate*

**Commented [LJ7]:** 3/3

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

**Commented [LJ8]:** 14/15

Question 3.1 [maximum 6 marks]

**The ethical principle that requires insolvency practitioners to act with integrity also states that he should adhere to high moral and ethical standards. Explain what is meant by this and provide examples to illustrate the difference between these concepts.**

*Integrity implies fair dealing, honesty and truthfulness as per principle 1*

Ips are members usually of a particular profession (which is accountants, lawyers etc) and therefore, on this basis, are required to demonstrate honesty. Integrity as honesty implies that an IP should be open and transparent in decision making and should not hide or misrepresent any information, it also implies that any negotiations with stakeholders or beneficiaries should also be open and truthful as well as acting on his dealings, refraining from misleading creditors or other stakeholders. In such insolvency procedures that would mean providing creditors with a honest thought on whether a restructuring will be viable or whether it is the best interest in creditors for a company to be wound up

Morality usually is subjective as this is close to a persons beliefs and therefore ensure the judge of what is right and what is wrong. Usually Morals are nurtured and impacted by culture, upbringing and education.

Ethics are generally built of morals however in reality are based of the solid rules and actions which determine correct behaviours. Therefore give that ethics determines what is right and what is wrong, and moral form the basis of ethics then it is important that both are considered as an IP should have his own beliefs but also adhere to ethical values of groups he belongs to. Such examples here would whether an IP believes it is important to be open and honest however given ethical guidance decides to divulge confidential information.

Commented [LJ9]: The connection between ethics and morals?  
5/6

Question 3.2 [maximum 9 marks]

**Which elements of insolvency proceedings are especially prone to create or give rise to threats to independence and impartiality? Please elaborate with reference to primary and secondary sources of law.**

There are certain elements of insolvency proceedings which will give rise to threats and impartiality. These are explained below

**1. Pre-appointment**

Whilst it is common for prior consultation to happen with the Company, Stakeholders and the proposed IP, these give rise to independence and impartiality issues on the part of the IP. The IP should address whether any consultations have meant that a material relationship not exists with the Company and or stakeholders and therefore should not take the appointment. In the case of Korda, Ten Network Holdings Ltd the administrators had reviewed the financial statements of the Company for several months prior to the appointment. Given the extensive work which would have benefitted the administrators with remuneration the court needed to establish whether the proposed administrators provided advice to the company or stakeholders in this setting. The safeguards for this, as seen in the case, that the board of directors had not met with the Ips to provide advice and for the IP to say that they might be the appointment taker in this event.

*In respect to Blackfriars limited, the administrators made the creditors aware it would be a light touch administration which is less cost draining, however the threat here was that an agreement was made with the appointing creditor who thought they could lead the administration and influence the managing of the estate. Whilst no judgement was found against the administrators there was increased scrutiny over their perceived independence*

**2. Subsequent appointments**

*Where a IP is allowed to act in different insolvency capacities. This leads to both independence and impartiality threats as there are self-review and self interest threats. Self-interest being the remuneration of the IP as they will be remunerated twice for the work done for the same company. Self review threats occur as the IP will not be perceived to act on judgements that have been made in a previous insolvency appointment and therefore less likely to take any action against.*

**3. Secret Monies and personal transactions**

*The CIP can have threats to independence and impartiality where decisions might be made which benefit the IP over the creditors or creditors are worse off, such as if the IP was to buy assets from the Company, or a family or friend of the CIP could place the CIP under scrutiny that the transaction would be for the interest of the creditors. Under Corporate law, the CIP must act under the no profit or no conflict rules, where by they cannot profit as their position as trustee, or create a conflict between duty of interest of the beneficiaries*

Commented [LJ10]: 9/9

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

***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 and licensed insolvency practitioner, 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. An undertaking that he complies with by subsequently issuing a written declaration of independence.**

**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.**

**Mr Relation's firm has been implementing a work-from-home arrangement for employees, and his secretary and associate have several sensitive documents pertaining to WeBuild Ltd in their possession and on their personal computers at home.**

#### **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.

*Ethical Issue #1: Mr Relation has independence issues on the basis that he is Mr Inlaws brother-in-law and godfather to Mr Inlaws daughter. This has significant independence issues on the basis that it creates a familiarity threat. Here, Mr Relations relationship with a director of the Company. The familiarity threat is that this could lead to Mr Relation being too sympathetic to the interest of others, e.g Mr Inlaw is both a director and a shareholder. Mr Relation has completed though an declaration of independence. Another way to safeguard would be to have two appointees and not just one appointee so that not just one appointee is working on the case.*

*However, this has been broken as Mr Relation conducted a superficial investigation into the affairs of the company. Here his independence and impartiality as an IP has been impacted as he is aware of the dealings of the directors prior to the insolvency and has not sought to investigate further. Additionally, he has relied on reports from Mr Inlaw, who his is brother in law to, regarding the company's business. It does not appear that he relied on all information from the Company, and company records which shows that he is not being objective or acting with integrity which he must so as a position with duties to other stakeholders.*

*Ethical Issue #2: The issue that Mr Relation is appointed as liquidator following the failed restructuring. This causes issues with both self-interest and self-review. We understand that during the administration a superficial investigation where no evidence of wrongdoing was found. The newly appointed liquidator will not review the investigation performed during the administration, however if an IP who was not part of the administration, or a new firm were appointed then they would investigate the actions of the administrator, to see if any claims can be brought against the administrator and or the directors. Additionally, Mr Relation is now being paid twice for work done with the same company, and therefore there is a self interest threat here. To ensure there aren't these threats it will be important to have a new IP appointed as liquidator.*

*Ethical issue #3. Keeping of sensitive information at the homes of employees is threat to the confidentiality of the nature of the case. There is sensitive information relating to Webuild which is freely around in employees homes and on private laptops which means this information can easily be shared to other parties. Ips have duty to keep information confidential, and whilst this is not sharing information, it could cause an issue to the case or the IP if information was to be released without the IP being aware. IPs have a duty to protect the interest of call creditors.*

*Ethical Issue #4. Mr Relation has been reported to advocate that lower ranking creditors should outweigh the interest of big financial institutions and therefore this is a threat to independence and impartiality given that he is reported to hold a bias against big financial institutions. It is important for IPs to remain impartial to all classes of creditors, and not seem to favour one set over the other as this can lead to poor judgement and face scrutiny. It is especially important with respect to large banks given they are funding the administration costs, however again there can't be bias towards big banks just because of their ability to continue funding the case. The IP needs to be impartial and work for the best interest of all creditors and follow the order of priority with respect to dividend as governed by statute.*

**Commented [LJ11]:** A very good discussion. I would have liked to see a more in-depth discussion of the ethical principles and their importance in the application.  
12/15

**\* End of Assessment \***