



Examiner's Comments

16 INSOLVENCY

September 2025 Examinations

The exam comprised of three compulsory questions.

Question One was worth 40 marks, with each part of the question worth 20 marks.

Questions Two and Three were worth 20 marks each, with each part of the questions worth 5 marks

Question 1

- (a) This question dealt with insolvent trading and required an analysis of section 588G and sections 588J-U of the Corporations Act.
- (b) This question dealt with the defences to insolvent trading and required an analysis of section 588H (and possibly section 588HA) as well as section 1317S of the Corporations Act.

Question 2

Each of the questions involved an analysis and application of relevant sections within Part 5.7B of the Corporations Act including sections 588FA-588FG. The questions did not relate to bankruptcy.

Question 3

Each of the parts to this question related to bankruptcy. The responses involved an analysis and application of relevant sections of the Bankruptcy Act including sections 116-117 and 120, 121 and 122.

Characteristics of poor or average responses

1. Failure to properly or adequately identify correct statutory provisions.
2. Failure to properly or adequately integrate correct legislative provisions and relevant case analysis.
3. Failure to distill key principles derived from case authorities.
4. Inadequate application of those legislative principles and case principles to the facts of each question.
5. Lack of clarity of reasoning with consistent responses when applying law to facts.

Characteristics of very good or excellent responses

1. Identification of correct statutory provisions.
2. A clear integration of correct legislative provisions and relevant case analysis.
3. Distillation of principles derived from case authorities.
4. Application of those legislative principles and case principles to the facts of each question.
5. Clarity of reasoning with consistent responses when applying law to facts.

Common mistakes

1. Merely reciting statutory provisions.
2. Expansive recitation of facts of case authorities and replication of large extracts.
3. Conclusions not based upon the principles referred to in responses.
4. Misapplication of legislative provisions.
5. No real conclusions.

Areas for improvement

Students are encouraged to consider the following points:

- Did I manage the time well?
- Did I answer all required questions?
- Did I address each point in each question?
- Did I identify and apply the right legal principles?
- Did I offer sufficient support to each argument and cite correct authorities?
- Did I reach a conclusion on each issue identified and at the end of each response?
- Did I acquire enough knowledge in the course and considered it sufficiently prior to exam to be able to focus on critical thinking of each issue while responding to exam questions?
- Did I focus on analysis, synthesis and evaluation rather than restatement of facts and information presented in the lectures and course materials?
- Where was my knowledge of this subject deficient?