

GUERNSEY BAR EXAMINATION

9.30AM, 26 APRIL 2016

PAPER ONE

CIVIL PRACTICE AND PROCEDURE

THREE HOURS

**CANDIDATES ARE REQUIRED TO ANSWER ALL QUESTIONS
THE MARKS AVAILABLE FOR EACH QUESTION ARE SHOWN BELOW.**

- **Question 1 – 35 MARKS**
- **Question 2 – 10 MARKS**
- **Question 3 – 15 MARKS**
- **Question 4 – 20 MARKS**
- **Question 5 – 20 MARKS**

**PLEASE WRITE LEGIBLY AND ENSURE THAT YOU ANSWER EACH
QUESTION ON A SEPARATE SHEET OF PAPER. PLEASE WRITE ON ONE
SIDE OF THE PAPER ONLY AND LABEL EACH SHEET CLEARLY WITH:**

- **NAME OF PAPER**
- **CANDIDATE LETTER**
- **QUESTION NUMBER**
- **PART NUMBER OF QUESTIONS (if applicable)**

MATERIAL PROVIDED:

1. **The Royal Court Civil Rules, 2007**
2. **The Evidence in Civil Proceedings (Guernsey and Alderney) Rules, 2011**

Factual background given by client

Pieter Princeton met with you at your offices yesterday. You did not know him beforehand, save through the pages of the local newspaper. He has been described as a high net worth individual. He has been living in Guernsey for several years now. He lives at Fort George. He has voiced his support for the Locate Guernsey project and has been reported to be becoming more heavily involved in investing in Guernsey-based projects. He discussed a number of matters with you. You would have been joined at the meeting by your usual supervising partner (and former pupil master), but he was unexpectedly off-Island dealing with an urgent matter. Since your meeting, you have relayed what was said to that partner who has asked you to progress matters pending his return to Guernsey after the weekend.

The first topic raised by Pieter at the meeting was his failure to acquire a superyacht he had wanted to purchase in 2009. He became aware at that time that many people of his type were suffering financial downturns and needed to liquidate assets. A friend of a friend of a friend was looking to sell his 48-metre vessel called *The Bok Beauty*. A possible sale had not been made public, but Pieter believed through his contacts that the asking price was US\$25 million. Pieter took the view that, through hard negotiation, a price of nearer to US\$20 million might be achievable. At that time, he was uncertain whether to seek the purchase through his trustees, SAA Trust Company Limited, a Jersey-registered fiduciary company, or through his investment company, Princeton Investments (Guernsey) Limited ("PIG"). He was at that time, and remains, the sole shareholder of PIG, albeit that his shares were originally held through nominees.

PIG has, since its incorporation in 2004, had two corporate directors. One is a Guernsey-registered company, GCI (Directors) Limited, and the other is a company registered in the British Virgin Islands, BVI (Directors) Limited. The two issued shares in PIG were held by related companies called GCI (Nominees) Limited and BVI (Nominees) Limited. Pieter dealt principally with Diana Dawson, the MD of GCI (Corporate Services) Limited, a Guernsey-registered company, which is the parent company of GCI (Directors) Limited and GCI (Nominees) Limited.

Pieter further explains that matters progressed reasonably smoothly throughout 2009 to the extent that, when he was over in the BVI in the run-up to Christmas that year, he attended at offices used by BVI (Directors) Limited and held a telephone conference with *inter alia* Ms Dawson. He was hosted in the Tortola office by Eric Erikson, a director of BVI (Directors) Limited. Pieter thinks he had met him once previously in London. Pieter was unsure about

the relationship with Ms Dawson, but believed that BVI (Directors) Limited was also a subsidiary, or somehow associated with, GCI (Corporate Services) Limited. The purpose of the telephone conference was to confirm that the vessel should be purchased using PIG. Draft heads of terms were to be prepared by PIG's Advocates to be sent to the seller's solicitors in London. *The Bok Beauty* was known to be registered in the Isle of Man. Pieter was considering whether to re-register the vessel in the Cayman Islands, or even in Bermuda, where he maintains certain ongoing business interests.

In early 2010, Pieter arranged for PIG to receive funds from his Jersey-based trustees in the event that the purchase proceeded. He agreed with Ms Dawson at a meeting held in London in February 2010, that it made sense to offer US\$19 million, but with scope to increase the offer up to a maximum of US\$21 million and no more. Pieter wanted the vessel to be available for his use in the summer of 2010 because he planned a special extended trip for family and close friends to coincide with his then wife's 50th birthday. He was not sure what he wanted to do subsequently, but he believed that he would be able to sell the vessel on for at least US\$25 million within two years, expecting the market to recover that speedily, thereby making a quick profit of up to US\$6 million. Ms Dawson promised that she would arrange for the necessary board meetings of PIG to be convened to ensure that the vessel was acquired in good time for the summer.

Pieter heard nothing more for a while. In June 2010, after several months of cruising around the southern hemisphere on a chartered vessel, Pieter returned to London, using the hotel suite he generally occupied, and then came across to Guernsey to see Ms Dawson. He was shocked when she told him that the planned purchase of *The Bok Beauty* had fallen through. A draft Bill of Sale had been prepared. She understood that the seller was happy to complete the sale at US\$19.8 million. PIG's bankers had been approached and confirmed that a letter of credit in that amount had been provided on behalf of the Jersey trustees. Ms Dawson recalled that all documentation had been headed "subject to contract" (or something similar). A board meeting of PIG had been arranged for 27 April 2010. Unfortunately, it had to be postponed because Mr Erikson had been unable to attend on behalf of BVI (Directors) Limited via the telephone link usually used. The re-arranged meeting for a week or so later then also had to be postponed because neither Ms Dawson nor her alternate as a director of GCI (Directors) Limited had been available, because both were suffering from food poisoning. Before the re-arranged meeting on 18 May 2010 could take place, PIG's Advocates had been informed by the seller's solicitors that the seller had received a higher offer and so would not be completing the sale to PIG.

At that meeting, Pieter and Ms Dawson proceeded to discuss their options. Pieter was keen to take immediate action to prevent the sale to the alternate purchaser, but Ms Dawson pointed out that there were too many risks associated with that for PIG and the better option was to look around the marketplace for a different superyacht to purchase. Before they could finalise what was best, Pieter had to leave to fly, via London, to New York to complete the purchase of an apartment for his daughter. He felt he had made his views clear, but left it to Ms Dawson and PIG to do what was considered to be best.

In the summer of 2010, Pieter personally chartered a vessel similar to *The Bok Beauty* for the birthday celebrations. The six-week charter cost him £510,000.

He subsequently learnt that *The Bok Beauty* had been purchased by an Australian financier for US\$21 million. It was re-named *Koala Kruiser* and its port of registry was changed to Singapore. Pieter understands from acquaintances that it was sold on by its new owner in 2013 for the equivalent of US\$24.5 million.

In early 2011, Ms Dawson informed Pieter that her shipping expert colleague had identified a different 48-metre vessel available to purchase by PIG for US\$22.5 million. He had also spotted an older, but larger vessel available at an asking price of US\$32 million. Pieter explained that he had thought about both vessels for a while but then decided that he no longer wanted a superyacht. He had it in mind at that point to relocate to Guernsey as his home, rather than possibly basing himself onboard his own vessel. His attention had, therefore, turned to purchasing his own private jet to facilitate his movements on and off Guernsey. In the end, in 2012, he purchased an executive jet for a similar amount of money that he had been prepared to spend on a boat, but using the Jersey trust rather than PIG as the vehicle through which to hold his aircraft.

His confidence in PIG had been affected by the experience in 2010, but he continued to use PIG to hold bricks and mortar investments, albeit that he had been gradually reducing his holdings in that sector. Indeed, it was not until a more recent event that he even thought again about the lost opportunity to own *The Bok Beauty* and the additional expenses he had had to incur at that time.

Last October, he was being driven in his Ferrari motor car to Footes Lane to attend a rugby match one Saturday when a car had pulled out into the side of his car from the Grammar School car park. It hit the Ferrari passenger door square on and caused Pieter to sustain a broken left arm and a whiplash injury. The Ferrari itself was damaged and it cost Pieter a little

over £14,000 to have it repaired. He was unable to work for a fortnight and still suffers pain in his arm. He thinks his golfing and tennis days are over. He is particularly sad about not being able to play tennis as he was expecting to be selected for the Guernsey veterans team this summer. What really upset him, though, was that the driver of the other car simply reversed away and left the scene. Luckily, he had spotted that the front seat passenger was Ms Dawson. He told the Police, when they arrived, about who he had seen in the car. He understands from what he has been told since that when Ms Dawson was spoken to, she explained that she had told her 17-year-old son, Terry, he must stop at the scene and exchange particulars but that her son, a learner driver she was supervising, had ignored her and sped off home.

Since then, Terry Dawson has pleaded guilty in the Magistrate's Court to driving without due care and attention and failing to stop at the scene of an accident. He is now a disqualified driver. When Pieter tried to contact Ms Dawson a couple of months ago, he was told that she had resigned from GCI (Corporate Services) Limited without working out her notice period. Pieter then telephoned Ms Dawson at her home but she was extremely rude to him. She told him that her son's life had potentially been ruined by the accident and the conviction that followed. He had stopped working as hard as he had been previously towards his summer exams and she feared he would not get the grades to go to university. She blamed Pieter for having such a flashy car causing distractions and thought that, in any event, Pieter might have chosen not to involve the Police at all and to sort things out between them. Pieter tells you that what struck him most was her comment about how disgusted she was at "boys and their toys", which he felt was intended to refer back to the aborted purchase of *The Bok Beauty*. She was really nasty to him generally and indicated that she was pleased that, from what she had read in the national media, the English insurers for young drivers, through which her son had been insured looked like it was about to go out of business.

Pieter further explains that he is not usually the sort of person to bear grudges because life is too short and there is always another opportunity around the corner but the car accident last autumn and the reaction of Ms Dawson when he contacted her to discuss matters civilly is the last straw. He wants immediate action to be taken against Terry Dawson and, if you think it is possible, against Ms Dawson as well. He adds that he is aware that Ms Dawson's house in the Castel is currently for sale with several local estate agents.

Turning back to *The Bok Beauty*, Pieter next explained to you that his reaction to the news that Ms Dawson had left GCI (Corporate Services) Limited was that he needed to take greater control over PIG. He took steps to have the shares held on his behalf transferred from the

two nominees into his own name, following which he caused the two corporate directors to be replaced by himself and his new girlfriend, Gwen Goodenough. He did this so that PIG could bring an action against the companies responsible for the mess-up over *The Bok Beauty*. Not only had the lost acquisition cost him money in the summer of 2010 (and here he cried in front of you), his wife had fallen ill immediately after the birthday celebration trip and had then died in early 2012. Though the doctors said it was nothing attributable to the holiday itself, Pieter has convinced himself now that there must have been some link and that his wife's untimely death could have been avoided.

Having collected himself, Pieter raised one final issue, which he described as "rather insignificant, but annoying". When he started seeing Gwen, she quickly became jealous of the amount of time Pieter was spending at work at an office in Town with his personal assistant, Paula-Ann Luscombe. The two women did not get on at all. It was jeopardising his relationship with Gwen and, because this was the first woman he had been attracted to since his wife's death, he decided the simplest solution was to sack Paula-Ann. In order to make it look genuine, he engineered a situation where he could accuse her of taking from the petty cash at the office without authority. When he had challenged her, she denied any wrongdoing, but he still dismissed her on the spot. He had thought about making a payment to her in lieu of notice, but decided that it would look better with Gwen not to be seen to be pandering to Paula-Ann. Paula-Ann had worked for him for approximately 20 months. He had dismissed her last September and, although he could not recall the exact date, he thought it was about three weeks before the car accident.

When he heard nothing more about it, he regarded the matter closed. However, just a few days ago he had received a letter from Paula-Ann in which she wrote that she now had a new job and her new employers had suggested that she should ask him to pay her the salary she would have earned during her notice period, which Pieter accepts was three months. Paula-Ann had been paid a generous amount of £45,000 per annum. Paula-Ann's letter further explained that she had visited the Greffe the previous week and had in her possession the forms to make a claim in the Magistrate's Court, which she knew had to be limited to no more than £10,000, or to seek permission to bring a claim in the Royal Court without using an Advocate. Her letter also refers to it being contrary to her human rights not to have been paid anything at the time of her dismissal. She stated that she had not decided what she would do yet but, if she did not get paid by Pieter in full within seven days, she would be taking action. Pieter told you he did not really understand what she was talking about because he thought anything like this would go to a tribunal.

Although Pieter's initial reaction had been that offering her about half of what she claimed to be due might see her go away, his stance had hardened the more he thought about it. In particular, he believes he cannot be seen by Gwen to be giving in to Paula-Ann and he thinks that a robust defence will potentially enhance his reputation in Guernsey as a tough businessman. Moreover, rather than paying off a former employee he would prefer to be seen to be donating a similar amount of money to local charitable causes. He also expresses his concern that he wants to ensure that any case heard against him is heard by a proper full-time judge.

Having given you all this information, Pieter had to leave you rather abruptly because Gwen was in Reception waiting to be taken to lunch. As he left, Pieter asked that you would set out for him as quickly as possible the ways in which his various concerns can best be addressed. When you explained this to your supervising partner yesterday evening, you both realise that there are some gaps in your knowledge but, because Pieter's legal work could potentially be very extensive, the partner tells you to get on as quickly as you can putting everything together to share with him on his return. In your discussion, you both identify the following matters to get on with:

QUESTION 1**(total marks - 35)**

Draft a full advice setting out what steps, if any, you can properly take in relation to *The Bok Beauty*. Within that advice, please ensure that as a minimum you address:

- (i) the other information you potentially need to gather to deal with Pieter's concerns, explaining why each piece of information is needed, when it will be needed by at the very latest, and from where you think it can be obtained;
- (ii) the procedural stages to commence proceedings in Guernsey, identifying what documents will need to be prepared and what they will need to include;
- (iii) whether or not those against whom action might be taken could object to proceedings taking place in Guernsey and what would happen were that to be the case;
- (iv) how this type of dispute might be resolved without proceeding to a full trial; and
- (v) the costs consequences associated with everything you consider might happen in such an action.

QUESTION 2

(total marks - 10)

Prepare a draft letter before action to be sent to the Advocates of GCI (Corporate Services) Limited in which you set out all matters that you consider should be raised at this stage.

QUESTION 3**(total marks - 15)**

Draft an advice for Pieter's benefit about the proceedings he can bring in Guernsey in respect of the car accident last October. Within that advice, please ensure that as a minimum you address:

- (i) how to include Diana Dawson in those proceedings;
- (ii) what steps, if any, can be taken to ensure that there are assets against which to enforce any judgment;
- (iii) relevant matters in relation to the gathering and preservation of evidence; and
- (iv) the consequences of Terry Dawson (or even Diana Dawson) being eligible for legal aid.

QUESTION 4

(total marks – 20)

Prepare a draft Cause in respect of the car accident (leaving such gaps as will need to be completed when further information is available).

QUESTION 5**(total marks – 20)**

Prepare a draft note to be sent to Pieter about the threatened action of Paula-Ann Luscombe in which *inter alia* you will explain to him:

- (i) the advantages and disadvantages for him procedurally if she commences proceedings before the Magistrate's Court or the Royal Court, and what Paula-Ann will need to do in either case;
- (ii) whether it is possible to ensure, as Pieter wishes, that the case is heard by one of the full-time members of the judiciary and, if so, how this could be achieved;
- (iii) your view (with reasoning) about whether he would be best advised to act for himself in any proceedings or to be represented by you, indicating what Pieter would need to do if he chose to represent himself; and
- (iv) what could be done if the outcome of the case is adverse to Pieter and he wishes to appeal.