

GUERNSEY BAR EXAMINATION

9.30AM, 27 APRIL 2016

PAPER TWO

CRIMINAL PRACTICE AND PROCEEDURE

THREE HOURS

CANDIDATES ARE REQUIRED TO ANSWER ALL QUESTIONS

THE MARKS AVAILABLE FOR EACH QUESTION ARE SHOWN BELOW. ALL QUESTIONS CARRY EQUAL MARKS.

- Question 1 – 20 MARKS
- Question 2 – 20 MARKS
- Question 3 – 20 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 Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999, as amended
2. The Drug Trafficking (Bailiwick of Guernsey) Law, 2000, as amended
3. The Criminal Justice (Fraud Investigation) (Bailiwick of Guernsey) Law, 1991, as amended
4. The Criminal Justice (International Co-operation)(Bailiwick of Guernsey) Law, 2001, as amended

QUESTION 1

(total marks – 20)

You represent Dan.

Four weeks ago, Tanya, a Latvian national, was seriously assaulted outside Pixies nightclub. She was part of a larger group of Latvians who work together in the same hotel that had gone out together to celebrate Tanya's birthday. As the group were leaving Pixies nightclub in the early hours of the morning they were set upon by a number of local males. A massive fight broke out, during which Tanya was struck over the head with a bottle. Fortunately she received only a small superficial cut as a result. She did not see who did it and by the time the police arrived all the locals had gone. One of her colleagues, Ricksus, was able to give the Police a statement that contained a description of a man he had seen wielding a bottle during the incident. The description he gave was "between 5'6" and 5'10" tall, slim to medium build with short dark hair and a small tattoo of the Chelsea FC crest on the left side of his neck."

Three weeks later Ricksus phoned the Police on his mobile phone to say that he was in Alliance supermarket and the man he had described above was there too. Officers duly arrived and arrested Dan. The Custody notes accurately describe him as being 6' 1", around 14 stone (90 kilograms) with a tattoo of the Chelsea FC crest on the left of his neck that is approximately the size of an orange. When interviewed under caution Dan provided a short prepared statement in which he denied having been in Town that night and gave "no comment" answers to all questions put to him. Dan was charged with assaulting Tanya and with affray.

You are defending Dan at his trial in the Magistrate's Court and the evidence put forward by the prosecution consists of:

- a written statement from Tanya in which she describes the incident and confirms being struck on the head but confirms she cannot identify any person;
- the oral evidence of Ricksus who said he saw around 5 males approach his group, who then started pushing and shoving his friends after which it turned into a bit of a mêlée and was quite confusing as to who did what. However, he said there was one male with a distinctive Chelsea tattoo on the right side of his neck whom he had seen holding a bottle which he used to strike out in the direction of Tanya. Although he did not see the bottle make contact with her he did hear a scream immediately thereafter and was sure he had heard what sounded like glass breaking. In addition, even though it was pointed out to him that the description he gave at the time was at odds with Dan's actual physique, he was nevertheless sure that the person that

he had seen 3 weeks later in Alliance was the same person that had struck out with a bottle;

- Dan's prepared statement of denial and his "no comment" interview.

(a) How would you present a half-time submission of "no case to answer" and what test would the court apply when considering the submission?

(4 marks)

(b) Your submission fails. What advice would you give to Dan about whether to give evidence or not? If he chooses not to give evidence how does the case then proceed?

(2 marks)

Dan does not give evidence. He is convicted and the reasons given by the Judge are: "I am as satisfied as I can be in the circumstances that the person identified in Alliance by Ricksus is the defendant and that it was him who was wielding the bottle outside Pixies. The tattoo, which I can see from here, seems to be pretty unusual and there cannot be that many Chelsea supporters in Guernsey. As there is no evidence that anyone else was holding a bottle and no other weapon was found and as the defendant has not offered an alternative explanation it seems pretty obvious to me that it was the bottle that caused Tanya's injury. I therefore convict him." After hearing mitigation Dan is sentenced to 2 weeks imprisonment.

(c) What are the grounds generally upon which an appeal against conviction can be made? To which Court is the appeal made and how is it constituted? What are the matters you would include in your skeleton argument in Dan's case?

(6 marks)

(d) Dan wants also to appeal his sentence. What advice do you give him?

(3 marks)

(e) The appeal against conviction is unsuccessful. Does he have any further right of appeal?

(2 marks)

(f) Several months after Dan's appeal against conviction is successful you represent him again in respect of another similar assault allegation. When taking his instructions at the Police Station he tells you: "You got me off the charge last time I glassed someone so I want you to do the same this time." How do you deal with this information?

(3 marks)

QUESTION 2

(total marks – 20)

(a) You are representing Guernsey at an international Anti-Money Laundering (AML) conference that has been organised by the World Bank. As a result of recent publicity concerning Panama it is clear from the start there are a number of representatives from other jurisdictions who think Guernsey is uncooperative, non-transparent, that it protects criminals and helps them keep their money away from tax and prosecution authorities around the world. You become aware that a speaking slot has suddenly become vacant and approach the conference organisers to ask if you can use it to give a presentation about Guernsey's AML regime, which they are happy to let you do. With reference not only to the relevant legislation, but also to how Guernsey AML's regime works in practice, as well as such external validation as may exist, what do you tell your audience?

(10 marks)

(b) You are asked to speak at another conference that has been organised locally. This time your topic is: "There can be no justice for women in Guernsey for so long as there is not a specific domestic violence law." You are asked to speak about the existing offences that may deal with domestic violence and what powers under criminal legislation the courts have, if any, to stop it occurring again.

(5 marks)

(c) Your last two speeches went down so well that you are now asked to speak to a group of local Sixth Form students about what you perceive to be the strengths and weaknesses of the Jurat system in Guernsey in criminal cases; whether repeat offenders generally can ever have a fair trial; and, whether Guernsey should consider introducing juries. What do you say?

(5 marks)

QUESTION 3

(total marks – 20)

(a) You are duty advocate in the Magistrate's Court and are required to advise the following:

(i) Jason was charged with a serious drug offence approximately 4 months ago. His case was committed to the Royal Court where he entered a guilty plea and is presently on bail waiting to be sentenced later in the year. He now faces further allegations of shoplifting and possession of a very small quantity of cannabis. He tells you that he first appeared in respect of these new matters 3 weeks ago when he pleaded guilty and is due to be sentenced in respect of them today. He says that he would like everything to be sentenced together. Is this possible? If he had not already entered guilty pleas to the new offences would your answer be different and what procedure might be followed to achieve his wish?

(3 marks)

(ii) Rupert tells you that he is due to be sentenced today in respect of assaulting three police officers. He has a long list of previous convictions that span many years. The most recent convictions on that list arose seven months ago when, exceptionally, he was sentenced in the Magistrate's Court to a 2 year Probation Order in relation to two offences of indecent assault. Work under the order has been suspended due to his being charged with the offences that he now faces today. He wants to know what is likely to happen to him now.

(5 marks)

(b) Glen (aged 18 years) and his sister Laura (aged 15 years) have never been in trouble before but are now being investigated by Guernsey Police in respect of two allegations of murder after their mother and father were found dead in the cellar of their home. Both Glen and Laura have recently been located by UK police officers at Gatwick Airport trying to buy plane tickets to Panama. You act for both suspects.

- (i) How might Guernsey Police secure the return of Glen and Laura to Guernsey?
- (ii) Assuming that they are successful in getting them back here, the police want to formally question them both under caution. Are they able to do so?
- (iii) What are the maximum time limits that the police are permitted to detain both of them before they must either charge or release them from custody?

- (iv) Both Glen and Laura are subsequently charged with the murder of their parents and the prosecution want both of them remanded in custody pending trial. On what grounds may the Court do so?
- (v) It is immediately obvious the case is going to involve a lot of work on your part. A committal hearing is unlikely to be held within the next 10 weeks and thereafter the case is not going to come to trial for many months. You immediately write to the prosecution to ask for “*disclosure forthwith of all the evidence and unused material generated thus far.*” The prosecution write back in curt terms and say they will disclose what they are obliged to disclose only when it is appropriate in their view to do so, and at this stage are only prepared to provide you with a two page summary of the case thus far. What is the prosecution’s duty of disclosure prior to committal?
- (vi) During the course of your preparation you become aware that there is likely to be material relevant to your case in the possession of a local trust firm that may exonerate your clients. As the parents of Glen and Laura were both clients of that firm, the trust company is refusing to release any information to you on the basis that it is confidential. How might you obtain access to that material?
- (vii) After committal has taken place the prosecution write to you to say that they have certain unspecified material in their possession that might be relevant to the case and, in respect of which they are putting you on notice that they are applying to the judge, on an ex parte basis, to withhold from you. Why have they done so?
- (viii) The prosecution evidence is largely circumstantial. Their case is based on a theory that your clients murdered their parents when they found out that they had left their entire considerable estate to a local animal sanctuary and Glen and Laura were to receive nothing. Two weeks before trial you discover that your firm’s initial conflict checks had failed to pick up that the private client department has acted for years for the deceased parents and are in the process of winding up their estate. Does this affect your ability to carry on acting in the criminal matter?

(12 marks)

QUESTION 4

(total marks – 20)

You act as in-house counsel to ABC Fiduciary Services Ltd (“ABC”). You are alerted by a colleague to the fact that there are numerous police officers downstairs in reception with a warrant to search the premises for evidence of a money laundering operation they are

investigating. You are told that they are principally acting upon a letter of request received from US prosecutors concerning the alleged drug trafficking activities of Pablo Mendes, who is a client of ABC. You are already aware from open source material that Mendes was charged two months ago with importing cocaine into Florida. The police have said, in addition, that Guernsey's Financial Crime Unit are also investigating ABC for possible money laundering offences connected to the same allegation. You were aware that ABC had been concerned that this might happen so had been seeking external legal advice from a local firm of advocates. The files will contain much of the exchanges between you and the advocates concerning the advice you have been given, which is that ABC should be concerned because (i) it should have suspected what was going on and (ii) it had not conducted enough CDD checks when taking Mendes on as a client.

At the moment, the police are being patient and are giving your colleague a few minutes to seek your advice but have said that if he does not return within 5 minutes to let them in then they will force entry and ransack the files to find what they are looking for.

- (a) It is clear that the officers are not going to go away if refused entry so what advice do you give to your colleague about what steps should now be taken to protect ABC's interests?
- (b) In addition to searching for paper files it is clear that much of the material they are looking for is held digitally and the Police officers therefore intend to remove all of ABC's computers so that they can mirror the hard drives, after which the computers will be returned. Can they do this?
- (c) Whilst they are on the premises the officers also want to question members of ABC's staff. May they do so and, if so, under what authority?
- (d) What other steps, if any, might the Police have taken to get access to the files (both paper and digital) of ABC and to interview staff members?
- (e) On the assumption that your colleague had not returned within the allotted 5 minutes the police barged their way in and took everything in paper form that they thought might be relevant as well as all the computers and now have copies of everything. You want to challenge their actions and stop them from examining the material. How may you do so? (At this stage no-one in the company has been charged with any offences.)

- (f) Assuming your challenge fails and members of the firms are eventually charged with money laundering offences, how might you later challenge the admissibility of material that was obtained during the search which the prosecution now seek to rely upon during the trial?

QUESTION 5

(total marks – 20)

- (a) Terry is 15 years old and is the subject of a community parenting order. As such, he is presently living in a HSSD home for children whilst an adoption placement is found for him. He is about to be charged with six domestic night time burglaries and, in respect of the last incident he is also said to have entered the bedroom of

a 14 year old girl and attempted to digitally penetrate her whilst she slept. Terry denies all the allegations and in respect of the indecent assault allegation he has told the police in interview that he knew the girl and she had invited him into the house without her parents knowing and things “just got out of hand a little”. The Police are indicating that they want to keep Terry in custody pending his first appearance in court. It is a Friday night and therefore the next regular sitting of the Court will not be until Monday morning. You are told that Terry has two previous matters on his criminal record, both of which were for assault and which resulted in him being referred to the Childrens’ Convenor.

Advise Terry as to:

- (i) whether the Police can keep him in custody and/or what other alternatives might be available to them;
- (ii) which Court he will first appear in;
- (iii) the basis upon which the case might be transferred to the Royal Court and what procedure would be followed.

(8 marks)

- (b) You act for Sarah, aged 20 years. She is due to appear in the Magistrate’s Court tomorrow morning having been charged with assault. It is not a serious incident and you advise her that the offence in isolation is not so serious that it cannot be dealt with in the Magistrate’s Court, and neither the prosecution nor the Court are likely to send the case to the Royal Court. However Sarah also tells you that for a theft offence she appeared in the Royal Court last year and was sentenced to undertake 160 hours of community service. So far she has only completed 80 hours and the order has now been suspended due to the new offence being charged. She therefore wants to know whether she can still have her case of assault dealt with in the Magistrate’s Court (to which she intends to plead guilty) and what powers, if any, that Court has to deal with the outstanding Royal Court sentence.

(7 marks)

- (c) Explain what is meant when the Magistrate Court makes “no order”.

(2 marks)

- (d) Simon is a perpetual shoplifter. He has been charged by the police with three new offences and they have offered him the opportunity to have twelve other similar offences taken into consideration. He does not understand what that means and seeks your guidance.

(3 marks)