

**GUERNSEY BAR EXAMINATION**

**9.30 AM, 15 MAY 2020**

**COMPULSORY PAPER TWO**

**PROFESSIONAL CONDUCT, ETHICS AND RELATED ISSUES**

**ONE HOUR**

**CANDIDATES ARE REQUIRED TO ANSWER ALL QUESTIONS**

**THE MARKS AVAILABLE FOR EACH QUESTION ARE SHOWN BELOW. NOT ALL QUESTIONS CARRY EQUAL MARKS.**

- QUESTION 1 – 10 MARKS
- QUESTION 2 – 10 MARKS
- QUESTION 3 – 5 MARKS
- QUESTION 4 – 15 MARKS
- QUESTION 5 – 10 MARKS

**PLEASE ENSURE THAT THE FOLLOWING IS CLEARLY MARKED ON EACH PAGE OF YOUR ANSWER SCRIPT:**

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

**MATERIAL PROVIDED:**

1. Oath, Articles and Rules of Professional Conduct of the Guernsey Advocate

## **QUESTION 1 (total 10 marks)**

### **Facts: Guernsey Classic Flights Ltd**

You are an Advocate at Victor Hugo LLP. You have received instruction from Guernsey Classic Flights Ltd (the Company). The Company has come to you for advice on its retainer with Hortense Bertin LLP ('HB'), Guernsey Advocates. You have given the requisite notification to HB that you are being consulted.

The Company runs pre-1950s airliners and uses them to take tourists on Channel hops. The Company has acquired a field on the western side of Guernsey which it is using as a landing strip. It has obtained the necessary official permissions.

The Company is engaged in litigation with the Guernsey Preservation of Heritage Society (the Society) which is seeking an injunction to prevent the Company from using its airstrip. Proceedings are at an early stage.

The Company is currently represented by HB. Victor Mole, the Company's M.D is a difficult and demanding character. He has reacted very badly to certain advice given to him by HB. He has even gone so far as to suggest, in an email to HB, that HB is incompetent. Mole, who rather enjoys conflict, takes the view that the contract with one's Advocate is inviolable and can only come to an end at the close of the case. HB has indicated that it wishes to stop acting for the Company. The Company has come to you for advice on its retainer with HB.

#### **1.1 Is HB entitled to terminate its retainer with the Company? (5 marks)**

Whatever your advice may have been, you are now to assume that Bertin and the Company have agreed the ending of the retainer. You are in a position to take the Company on as a client.

#### **1.2 Apart from costs information, what information do you need to give to the Company at the beginning of the retainer? (2 marks)**

Victor Mole is well known for being an overbearing character. You are aware that in the past he has put pressure upon those acting for the Company to bend the ethical rules.

#### **1.3 What express or implied terms (within the Rules of Professional Conduct) concerning Victor Hugo LLP's retainer with the Company, might be relevant if problems arise? (3 marks)**

## **QUESTION 2 (total 10 marks)**

### **Facts: Hortense Bertin**

You are an Advocate at Victor Hugo LLP. You have been instructed to represent Hortense Bertin in a complaint brought by her client Terry Smithfield. Bertin received a complaint from Smithfield. She tried to resolve it. The complaint has gone to the Bâtonnier and has been considered with the President. The conclusion has been reached that the complaint qualifies under the rules. The Registrar is ready to present the case.

2.1 Who will now make the decisions upon whether the complaint is well founded?  
**(3 marks)**

2.2 What disciplinary sanctions may the disciplinary body impose?  
**(4 marks)**

The essence of the complaint is this. Bertin was representing Smithfield in a case where he had been indicted for serious offences. As part of her preparation for the case, Bertin had discovered a decision of the Guernsey Court of Appeal which was binding upon the Royal Court. That decision was not helpful for Smithfield's case, although Bertin took the view that it could be distinguished on the facts. Bertin drew the case to the Royal Court's attention and attempted to distinguish it. The Royal Court took the view that the case was indistinguishable and directed the Jurats accordingly.

2.3 Explain whether or not Bertin did what she was supposed to do?  
**(3 marks)**

### **QUESTION 3 (total 5 marks)**

#### **Facts: Guardian Import (Panama) Ltd**

You are an Advocate in Victor Hugo LLP. You have just received instructions to act on behalf of Guardian Import (Panama) Ltd ('Guardian') incorporated in Panama one month ago. Guardian appears to have monetary assets of £10 million despite never having traded and having only one hundred shares worth about £1.00 each. You can find no trace of any lending from an established lender.

Guardian has been introduced to Victor Hugo LLP via an intermediary, Denys Oakes. He is based in the British Virgin Islands ('BVI'). You have tried to establish the identity of the true owners of Guardian but have been unable to do so. You telephone Denys Oakes and are told that everything is above board. You are particularly impressed to be told that Denys relies upon your discretion and that, if the referral relationship develops further, you can hope to receive a steady stream of clients. You agree that you will keep the intermediary in the picture about all aspects of the matter. What the 'matter' may be is causing you some doubt because, as you look back at the file, you notice that Oakes has never told you the reason for instructing Victor Hugo LLP.

Today, Guardian has deposited the sum of £10 million into your client account even though there is not, as yet, any transaction to complete. The money has come from a bank in Estonia via the BVI.

You are aware that the matter has been reported to the appropriate police authorities because of some sort of criminal money laundering worries but you have not been told why. You are left feeling a little worried that Denys Oakes may not be too impressed by the turn of events especially if his client's money becomes mired in red tape. You are inclined to telephone him.

- 3.1 What risk would you be taking if you were to telephone the intermediary? Apply the law. **(5 marks)**

#### **QUESTION 4 (total 15 marks)**

##### **New facts: Flat 15, Dounray House**

You are an Advocate in Victor Hugo LLP. You are acting on the acquisition of Flat 15, Dounray House, Cliff Street, St Peter Port.

Your firm has taken the view that it can always act for lender and borrower in the same property transaction.

- 4.1 To what extent is this view correct? Are there any limits on this?  
(5 marks)

##### **New Facts: Anthony Nicholson and Guernsey Sunshine Bank Ltd**

You are continuing to act on the acquisition of Flat 15, Dounray House, Cliff Street, St Peter Port. The flat is being purchased for £215,000. The buyer is Edward Nicholson. Mr Nicholson is not a cash purchaser. He is arranging to borrow money to fund the purchase. The lender is the Guernsey Sunshine Bank Ltd ('the Bank').

In his mortgage application, Mr Nicholson has referred to himself as being an employed company director with an income of £125,000 per annum. It has just become apparent that Mr Nicholson is a self-employed tomato grower - albeit a very successful one. He grows tomatoes hydroponically. His income last financial year was £150,000. The Bank's stated position is that it only lends to people who are employed. You can assume that this is a new policy for the Bank and not one of which local practitioners would know until they read the Bank's final instructions for drawdown.

- 4.2 What three ethical problems could arise for the Advocate as between the Bank and Mr Nicholson when viewed from the perspective of the Advocate's duty to the Bank?  
(7 marks)
- 4.3 What costs matters were covered in your initial correspondence Mr Nicholson? You can assume that no estimate was given.  
(3 marks)

## **QUESTION 5 (total 10 marks)**

### **Facts: Victor Hugo LLP**

You are an Advocate in Victor Hugo LLP. Having just joined the firm, you have been asked to review its marketing strategy. You have come from a jurisdiction where it is common for people to use social media as a means of marketing.

- 5.1 What are the basic principles relating to how an Advocate may advertise via social media? **(4 marks)**

Your firm is well known and highly regarded for its work in commercial disputes. It has recently acted for a number of offshore entities in disputes that have a multi-jurisdictional dimension.

- 5.2 In your social media campaign what claims may you make as to the firm's expertise? **(2 marks)**

### **New facts: Garine v the Trustee of the Petroc Trust**

You have been asked to review the files of an Advocate who has just left Victor Hugo LLP. You find that the firm is acting for Pauline Garine in a matter where there has been a long running dispute over a family trust which finally spilled over into litigation. You find that the Cause pleads two matters:

- (a) It is claimed that Pauline Garine is a beneficiary of the Petroc Trust when in fact she has never been a beneficiary. It is clear that the former Advocate examined the Trust deeds but decided to pursue the point in any event.
  - (b) It is claimed that the Trustee of the Petroc Trust has acted fraudulently and in breach of trust. There is no evidence of this. Such evidence that there is suggests that the Trustee has acted entirely properly. There is no statement from the client on the file.
- 5.3 By reference to fundamental ethical obligations, but without reference to the Rules of Professional Conduct, explain why this course is an improper one for an Advocate to have taken. **(4 marks)**

**END OF PAPER**