

GUERNSEY BAR EXAMINATION

9.30AM, 20 MAY 2019

COMPULSORY PAPER ONE

BAILIWICK LAWS, CONSTITUTION AND ADMINISTRATION

THREE HOURS

CANDIDATES ARE REQUIRED TO ANSWER ALL QUESTIONS

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

- Question 1 - 15 MARKS
- Question 2 - 20 MARKS
- Question 3 - 20 MARKS
- Question 4 - 15 MARKS
- Question 5 - 10 MARKS
- Question 6 - 10 MARKS
- Question 7 - 10 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)

QUESTION 1 (total 15 marks)

“While the status of L’Approbation as legislation prevents direct abrogation of its provisions by judicial decision, the scope for judicial development of the law around and in addition to its provisions should not suffer the constraints which more modern statutory provisions would impose.” Per Lord Hodge in *A v R* [2018] UKPC 4, para 33.

- 1.1 Set out the main features and the historical context of L’Approbation des Lois. **(6 marks)**
- 1.2 Explain the role of L’Approbation in Guernsey Law, including reference to Norman and Guernsey legal commentators and judicial decisions. **(9 marks)**

QUESTION 2 (total 20 marks)

“If, after any transition period, the United Kingdom remains in the EU customs union, nothing much will have changed in the Bailiwick’s relationship with the EU.”

- 2.1 Set out the Bailiwick's current relationship with the EU (both in relation to customs and other matters). **(7 marks)**
- 2.2 Discuss to what extent, if any, the quote above is correct. **(7 marks)**
- 2.3 Identify the principal legislation the Bailiwick has enacted in relation to Brexit and explain its effects. **(6 marks)**

QUESTION 3 (total 20 marks)

Members of the UK Parliament have recently laid an amendment to the Financial Services (Implementation of Legislation) Bill, the relevant text being as follows:

"Public registers of beneficial ownership of companies in the British Overseas Territories and Crown Dependencies.

(3) For the purpose of the detection, investigation or prevention of money laundering, the Secretary of State must provide all reasonable assistance to the governments of the Crown Dependencies to enable each of those governments to establish a publicly accessible register of the beneficial ownership of companies registered in that government's jurisdiction.

(4) An Order in Council must be made requiring the government of any Crown Dependency that has not introduced a publicly accessible register of beneficial ownership of companies within their jurisdiction to do so by 31 December 2020.

(5) An Order in Council under subsection (4) must set out the form that the register must take.

(6) An Order in Council under subsection (4) -

(a) must be laid before Parliament and

(b) shall cease to have effect if either House of Parliament resolves before the end of the 28 days beginning with the day on which the Order is made that it should cease to have effect.

(7) In calculating a period of 28 days for the purposes of subsection (6)(b), no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

(8) For the purposes of this section, a "publicly accessible register of the beneficial ownership of companies" means a register which, in the opinion of the Secretary of State, provides information broadly equivalent to that available in accordance with the provisions of Part 21A of the Companies Act 2006 (information about people with significant control).

(9) For the purposes of this section, "Crown Dependency" means -

(a) any of the Channel Islands; or

(b) the Isle of Man."

The Crown Dependencies have objected that the amended Bill would be unconstitutional.

- 3.1 Describe the main features of the Bailiwick's relationships with (a) the Crown and (b) the UK Parliament and (c) Her Majesty's Government. **(7 marks)**
- 3.2 Set out the areas or circumstances in which the UK Parliament may exercise 'paramount powers' to legislate in the Crown Dependencies' domestic affairs. **(5 marks)**
- 3.3 Identify how the Bailiwick might seek to challenge or otherwise react to the amended Bill or any Order in Council made under that Bill. **(5 marks)**
- 3.4 In light of the constitutional issues discussed above, is the term Crown Dependencies helpful in describing the constitutional relationship or might another term such as Crown Dominions be more apposite? **(3 marks)**

QUESTION 4 (total 15 marks)

A partner in your firm has been asked to assist the States of Alderney in considering reforms to the Court of Alderney. The partner asks you to prepare a summary setting out:

- 4.1 the origins and a brief history of the Court; **(2 marks)**
- 4.2 the personnel of the Court and their respective functions; **(3 marks)**
- 4.3 the jurisdiction of the Court (including any concurrent jurisdiction with other courts in the Bailiwick); **(4 marks)**
- 4.4 a comparison with the Court of the Seneschal; and **(4 marks)**
- 4.5 any ways in which the Court might sensibly be reformed. **(2 marks)**

QUESTION 5 (total 10 marks)

“The States of Deliberation are elected and organised to promote deliberation, rather than decision.”

- 5.1 Discuss critically, by reference to the Harwood Report and subsequent reforms up to the change in machinery of government effected in 2016. **(10 marks)**

QUESTION 6 (total 10 marks)

"A judge of first instance may not... do what an appellate court may properly do" per Blom-Cooper J.A. in *Morton v. Paint* [1996] 21 GLJ 61.

- 6.1 Explain how precedent applies in the court hierarchy of Guernsey, also considering the effect of judgments given by UK, Commonwealth and other courts. **(5 marks)**
- 6.2 Explain and discuss critically the decision of the Guernsey Court of Appeal in *Morton v. Paint*. **(5 marks)**

QUESTION 7 (total 10 marks)

"Guernsey's international identity framework is illusory."

7.1 Discuss this statement critically. **(5 marks)**

7.2 Explain whether and, if so to what extent, the Bailiwick can enter into international agreements on its own behalf. **(5 marks)**

END OF PAPER