

GUERNSEY BAR EXAMINATION

9.30 AM, 14 MAY 2021

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 – 27 MARKS**
- **QUESTION 2 – 12 MARKS**
- **QUESTION 3 – 11 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 27 marks)

Initial facts: Sally Drake and the sale of The Old Farmhouse, St Andrew, Guernsey

Victor Hugo LLP ['Victor Hugo'] is approached by James Broadwell who says that he is Sally Drake's agent. Broadwell says that Drake owns The Old Farmhouse in the Parish of St Andrew ['the property'] and wishes to sell it. Broadwell further says that Drake wants Victor Hugo to act in the sale.

1.1 What is the first step that you as the advocate at Victor Hugo should take?

Revised facts: Sale of the Property

Notwithstanding any advice that you may have given previously, you are now to suppose that Victor Hugo was approached by Sally Drake in relation to the sale of the property. Nathaniel Ether wishes to buy the property from Drake.

1.2 Is Victor Hugo forbidden from acting for Drake and Ether? Set out the relevant law.

Revised facts: Sale of the Property

1.3 Would it make any difference to the situation if Victor Hugo knew that there was a defect in Sally Drake's title before being instructed to act for Drake and Ether on the sale and purchase?

Revised facts: Sale of the Property

Notwithstanding any advice given in the previous answers, you are now to suppose that the sale of the premises from Drake to Ether went ahead with Victor Hugo acting for both parties.

1.4 The sale of the premises being non-contentious, what should Victor Hugo have said to Drake and Ether about costs?

Revised facts: Ether v Drake

Notwithstanding any advice that you may have given in any previous answers, you are to suppose that the sale of the premises from Drake to Ether went ahead with Victor Hugo acting for both parties. Both Drake and Ether were delighted with Victor Hugo LLP's service.

There has now arisen between Ether and Drake an entirely separate dispute over the sale of a motor vehicle. Ether intends to sue Drake and has asked Victor Hugo to act for him. Sally Drake objects to the firm acting on the basis that, having previously acted for her, Victor Hugo is now bound by a duty of confidentiality.

- 1.5 Can Victor Hugo act for Nathan Ether in the litigation over the motor vehicle? Set out the relevant law.

QUESTION 2 (total 12 marks)

Pierre du Pont wishes to instruct you regarding the purchase of a property investment company. The purchase price is £10 million. You are advised the funds for the purchase will be loaned to Pierre by a family trust. There are two trustees, Pierre's father Jean and his uncle Gerald both of whom live in Myanmar. Pierre ordinarily resides in France. Explain what due diligence you might seek before accepting Pierre's instructions.

- 2.1 Explain the different approach you might take to due diligence for low-risk Guernsey resident individuals and non-resident individuals.

QUESTION 3 (total 11 marks)

New facts: Gerald James and Janine James

Brother and sister Gerald and Janine James are keen business rivals. Each owns a chain of restaurants in the Channel Islands. Due to a mixture of bad luck, Gerald has had to close his three restaurants on Guernsey. Janine wishes to take assignments of the leases for the restaurants and to acquire their goodwill. Victor Hugo is now acting for Janine James.

Victor Hugo used to act for Gerald James. It holds important information about the goodwill associated with the restaurants.

Janine has now asked Victor Hugo whether there is any financial information available concerning the restaurants. Gerald has refused to provide this information to Janine. This information is crucial for Janine in deciding whether or not to proceed.

Victor Hugo has, so far, said nothing.

- 3.1 Leaving aside the question of conflicts of interest, what is the impact of the inter-relating duties of confidentiality and disclosure on the information which Janine James has requested?

END OF PAPER