

GUERNSEY BAR EXAMINATION

9.30AM, 16 MAY 2022

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.

- **QUESTION 1 – 20 MARKS**
- **QUESTION 2 – 20 MARKS**
- **QUESTION 3 – 15 MARKS**
- **QUESTION 4 – 25 MARKS**
- **QUESTION 5 – 20 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 QUESTIONS (if applicable)**

QUESTION 1 (total 20 marks)

“In our view, then, although the 1972 Act gives effect to EU law, it is not itself the originating source of that law. It is, as was said on behalf of the Secretary of State echoing the illuminating analysis of Professor Finnis, the “conduit pipe” by which EU law is introduced into UK domestic law...”

R (Miller) v Secretary of State for Exiting the European Union [2017] UKSC 5 at [65] per Lord Neuberger, Lady Hale, Lord Mance, Lord Kerr, Lord Clarke, Lord Wilson, Lord Sumption and Lord Hodge.

- 1.1 Describe the analogous “conduit pipes” by which EU law was brought into effect in Guernsey before Brexit.
- 1.2 With reference to case law, to what extent could it be said that the scope of Guernsey’s conduit pipes were restricted?
- 1.3 How, legally, have the conduit pipes to Guernsey been ‘switched off’?
- 1.4 *“In Guernsey, Brexit legislation has allowed the senior committee* to legislate by the back door”*. To what extent is this true and what, if any, limitations are there to mitigate potential abuses of power?
[* this is a reference to the States of Guernsey Policy and Resources Committee]

QUESTION 2 (total 20 marks)

A journalist from UK legal publication the Bar Society Journal contacts your firm with a request for assistance. The BSJ is running an article on legal systems of the British Islands and wants to include an article about customary law in the Bailiwick.

2.1 Your senior partner requests you to write a note which covers the following:

- (a) the origins and nature of the customary law,
- (b) the most important steps in the development of the customary law (including an explanation of why they were so important),
- (c) the subject areas which the customary law has traditionally covered,
- (d) how the customary law can be changed or replaced (giving relevant examples),
- (e) examples of 5 of the most important commentators on the customary law (including brief details of their works),
- (f) examples of 5 ways in which the customary law continues to have effect today, and
- (g) an area of customary law which might benefit from reform (including the reasons for and against its reform).

You are also asked to explain how, if at all, the customary law is different across the jurisdictions of the Bailiwick.

QUESTION 3 (total 15 marks)

The Policy & Resources Committee of the States of Guernsey, mindful of projected excesses of States expenditure over revenue, has established a sub-committee tasked with the job of reviewing and making recommendations for savings in States expenditure. The first meetings of the sub-committee have consisted of a number of brain-storming sessions during which members of the sub-committee have discussed wide-ranging ideas for savings. One of those ideas is the abolition of the office of Lieutenant Governor. Deputy Napoleon de la Poutine, who is a member of the sub-committee, writes to you seeking your advice. The Deputy states:

“I confess that I don’t really know what the Lieutenant-Governor does. However, would it really matter if the office were abolished and any duties divided up perhaps for the States or the Bailiff and other public office holders or civil servants to perform? I would be grateful for your advice on the legal and constitutional issues that arise and anything else that occurs to you on the subject.”

3.1 Please advise Deputy de la Poutine about the following matters:

- (a) the main functions that attach to the office of Lieutenant Governor and the need for them all to be carried out,
- (b) how best to achieve the abolition of the office of Lieutenant Governor and whether abolition can be achieved by the unilateral action of the States of Guernsey,
- (c) the suitability of bodies and officers such as the States and/or the Bailiff and other public officers or civil servants, or another individual, to carry out the functions of the office,
- (d) any other issues that occur to you in connection with a proposal to abolish the office of Lieutenant Governor and transfer the functions to someone or somebody else to carry out.

QUESTION 4 (total 25 marks)

The attached Appendix refers to this question.

You are employed in a local firm of Advocates. You are approached by a Member of the States of Deliberation, Deputy Hannibal de la Quanteraine, a former stalwart of the St Pierre du Bois douzaine. He is concerned with draft provisions of a Bill of the UK Parliament which have been referred by the Ministry of Justice to the external relations team of the Policy & Resources Committee. The Committee, in turn, has decided to submit the Bill to the States of Deliberation, in accordance with Article 72A of the Reform (Guernsey) Law, 1948 (*set out in the attached appendix*), to enable the States to signify their views on it.

Deputy de la Quanteraine is concerned that clause 65 of the Bill appears to create extra-territorial offences that can be committed by “hard working Guernsey folk going about their lawful business in Guernsey”. He believes this to be “a blatant power grab and a bloney disgrace” and that the MOJ officials are “intermeddling fichu English”.

Clause 65 provides as follows –

“65. Extra-territorial application and jurisdiction to try offences

- (1) Section 1 [*reproduced below*] applies to an act done outside the United Kingdom, but only if the act is done by a United Kingdom person.
- (2) In subsection (1) “United Kingdom person” means—
 - (a) an individual who is habitually resident in England and Wales,
 - (b) a United Kingdom national, or
 - (c) a body incorporated or constituted under the law of England and Wales.
- (3) For this purpose a United Kingdom national is an individual who is—
 - (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen,
 - (b) a person who under the British Nationality Act 1981 is a British subject, or
 - (c) a British protected person within the meaning of that Act.
- (4) Proceedings for an offence committed under section 1 outside the United Kingdom may be taken, and the offence may for incidental purposes be treated as having been committed, at any place in England and Wales.”

Clause 1 of the Bill, to which clause 65 refers, states as follows –

"1. Improper use of electronic messaging systems.

A person who sends in electronic form and by electronic means a message or material that any recipient may be liable to find offensive having regard to the recipient's individual beliefs or sensibilities is guilty of an offence."

There is no equivalent offence under Guernsey law, although the Telecommunications (Bailiwick of Guernsey) Law, 2001 does have an offence of sending "by means of a telecommunications network, a message or other matter that is grossly offensive or of an indecent, obscene or menacing character".

Deputy de la Quanteraine advises you, correctly, that "many Guernsey folk who have lived their entire bloney lives here are British citizens, caw chapin!" He is determined to raise these issues in the States, and to express his vehement opposition to the draft clause in question.

4.1 Advise Deputy de la Quanteraine of the effect of clause 65, and as to its constitutional propriety, or otherwise. Without limitation, have regard in your advice to:

- (a) the Kilbrandon Report,
- (b) the matters for which Kilbrandon considered the UK to retain responsibility and paramount powers to legislate,
- (c) the restrictions on the exercise of those powers,
- (d) matters in respect of which the UK has customarily legislated,
- (e) the Crown's responsibility for "good government" in Guernsey, and
- (f) Guernsey's developing international identity.

QUESTION 5 (total 20 marks)

- 5.1** Set out the powers of the States of Deliberation to enact legislation (including in relation to Alderney and/or Sark).
- 5.2** Contrast the legislative processes in Guernsey, Sark and Alderney.
- 5.3** Set out the function and constitution of the States of Election, and suggest any potential reform of the States of Election (giving reasons for any reform).

END OF PAPER

QUESTION 4 APPENDIX

ARTICLE 72A OF THE REFORM (GUERNSEY) LAW, 1948

"Duty to refer certain matters to the States of Deliberation."

72A. (1) Where it is proposed that –

- (a) a provision of a draft Act of the Parliament of the United Kingdom should apply directly to Guernsey, or
- (b) an Order in Council should be made –
 - (i) extending to Guernsey a provision of an Act of the Parliament of the United Kingdom,
 - (ii) extending to Guernsey a Measure, pursuant to the Channel Islands (Church Legislation) Measures 1931 and 1957, or
 - (iii) that is otherwise expressed to have effect in, or to be applicable to or otherwise binding upon, Guernsey,

the Policy and Resources Committee shall, unless that Committee considers it unnecessary, submit the proposal to the States of Deliberation, in order that the States may signify their views on it.

(2) Where, upon transmission of –

- (a) an Act of the Parliament of the United Kingdom containing a provision described in paragraph (1)(a), or
- (b) an Order in Council described in paragraph (1)(b),

to the Royal Court for registration, it appears to the Royal Court that the States of Deliberation have not signified their agreement to the substance of the provision or Order in Council –

- (i) the Royal Court shall refer the provision or Order in Council, as the case may be, to the Policy and Resources Committee, and
- (ii) the Policy and Resources Committee shall, unless that Committee considers it unnecessary, submit it to the States in accordance with paragraph (1).

(3) In this Article "**Policy and Resources Committee**" has the meaning given in Article 66A(3)."