

GUERNSEY BAR EXAMINATION

09:30AM, TUESDAY 14 MAY 2024

COMPULSORY PAPER

BAILIWICK LAWS, CONSTITUTIONS AND ADMINISTRATION

THREE HOURS

CANDIDATES ARE REQUIRED TO ANSWER ALL QUESTIONS. THE MARKS AVAILABLE FOR EACH QUESTION ARE SHOWN BELOW.

- **QUESTION 1 – 25 MARKS**
- **QUESTION 2 – 20 MARKS**
- **QUESTION 3 – 15 MARKS**
- **QUESTION 4 – 25 MARKS**
- **QUESTION 5 – 15 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 [25 marks]

Deputy Calvin le Chauve-Souris visits you in your office. He has a shopping list of major legislative proposals he wishes to promote but can find no support from any of his fellow committee members.

The three matters in relation to which Deputy le Chauve-Souris wishes the States of Deliberation to legislate are -

- (a) assisted dying, in relation to which he believes Canadian, Dutch and Swiss legislation provide workable precedents.
- (b) the disestablishment of the Church of England, and in addition an end to the "pernicious practice" (as he puts it) of parochial rates being used for the maintenance of the parochial churches pursuant to the *Loi relative à la Taxation Paroissiale* of 1923.
- (c) the decriminalisation of cannabis use, as he also believes has been proposed in Bermuda.

The Deputy, acknowledging the controversial nature of the proposals but convinced of his righteousness, wants to know:

- (i) how he might present these proposals to the States, on the assumption he will not find a sponsoring committee.
- (ii) what constitutional and procedural steps in the Bailiwick and the UK his proposals and the necessary implementing Projets de Loi would have to surmount.
- (iii) what legal or constitutional arguments might be presented in opposition to the proposals and implementing Projets, whether on the part of the Bailiwick or the UK authorities; and
- (iv) what counter-arguments could be brought to bear should such opposition materialise, and in particular should the UK authorities decide that any of the implementing Projets be refused Royal Sanction.

In your advice, do not comment on the merits of the proposals, except insofar as you consider them to be legally or constitutionally flawed.

Question 2 [20 marks]

An Advocate, Stanley de Bougainville, has asked you to help prepare a note for the partners in your firm's new office in the Falkland Islands; they are interested in the courts of other island jurisdictions, and you are asked to write about the Court of the Seneschal.

In this note, you are specifically asked to address:

- (a) the establishment and subsequent development of the Court
- (b) the identity, appointment and functions of the members and officers of the Court
- (c) the civil and the criminal jurisdiction of the Court
- (d) the relationship of the Court with other courts in the Bailiwick and further afield, and
- (e) the special role and duties of Advocates appearing before the Court

You are also asked to:

- (i) consider any difficulties which face the Court
- (ii) set out any potential reforms to the Court (noting the recommendations of the Venne Report), and
- (iii) analyse the advantages and disadvantages of any such reforms

Question 3 [15 marks]

Deputy Maladroit, who prides himself on his constitutional knowledge, presents you with a copy of the Royal Assent to Legislation (Delegation to Lieutenant-Governor) (Bailiwick of Guernsey) Order 2024 ("the Order"). He asks for your advice concerning the new process and, in particular, whether this changes how Projets de Loi are debated and approved by the Bailiwick parliaments.

- (a) Advise Deputy Maladroit accordingly and also explain the perceived advantages and any disadvantages you can think of to the new process. [5 marks]

Deputy Maladroit is grateful for your advice, but also has a further question to ask. He has noticed that, in article 8, the Order defines "Lieutenant Governor" to include the Deputy Lieutenant-Governor and any Acting Lieutenant-Governor where there is no Lieutenant-Governor in post or if the incumbent was absent or unavailable. He believes that a Deputy Lieutenant-Governor includes the Bailiff and Deputy Bailiff and wants to know, not only if this is correct, but also whether such provision might offend against the principle of separation of powers, given the role of the Bailiff and Deputy Bailiff (which he does not appear to understand very well).

- (b) Explain the roles of the Bailiff and Deputy Bailiff in giving your answer and analyse the issue he raises regarding those roles and the principle of the separation of powers in relation to the Bailiwick. [10 marks]

Question 4 [25 marks]

"I do not know whether [the permissive extent clause inserted in the Fisheries Bill 2020 without the consent of Guernsey and Jersey] is supposed to be a "break glass in emergency" clause, but it seems to suggest the possibility of the UK Government trespassing on the constitutional integrity of the Crown dependencies, in furtherance of a potential dispute between the UK Government and the Crown dependencies."

Quote from Sir Bob Neill, KC, MP (Chairman of the House of Commons Justice Committee) during the House of Commons debate on the Fisheries Bill in October 2020.

1. The opposition of Guernsey and Jersey was to the insertion of a permissive extent clause ("PEC") into the Fisheries Bill:
 - (a) what is a PEC?
 - (b) what is the usual procedure for exercising a PEC?
 - (c) what right of challenge (if any) exists to the exercise of a PEC?
2. According to the Kilbrandon Report:
 - (a) in what areas does the UK have paramount powers to legislate for the Crown dependencies? You may also refer to any relevant case law in answering this question
 - (b) what is the basis for these paramount powers being available to the UK? Given the Crown dependencies' right to self-determination and growing international identity since the 1970s, is it constitutionally appropriate for the UK to retain these powers?
 - (c) what is the constitutional convention under which the UK will not legislate for the Crown dependencies?
 - (d) does this convention still have any value? Please explain

Question 5 [15 marks]

The Bar Council wishes to update its website on the sources of Guernsey law, and you have been asked to prepare the page on customary law. Presuming it will be read by a legal audience, please provide some text dealing with the following matters:

- (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), and
- (e) how, if at all, the customary law is different across the jurisdictions of the Bailiwick