

GUERNSEY BAR EXAMINATION**TUESDAY 23 MAY, 11:00am****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 – [20] MARKS
- QUESTION 2 – [12] MARKS
- QUESTION 3 – [10] MARKS
- QUESTION 4 – [08] MARKS

TOTAL 50 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 (20 MARKS)**Facts**

Soldan Markovitch is the Minister of Technology in Latonia, a Baltic state which is part of NATO. Latonia is not classed as a high-risk country and is not the subject of any sanctions regime. Markovitch is resident in Talga, the Capital of Latonia.

Markovitch wishes to purchase land close to the Guernsey Airport in order to develop it for an advanced electronic technology facility ('the tech facility') and approaches you, an advocate at Victor Hugo LLP to act for him in the matter. The land already has the requisite planning permission. The combined purchase and development cost, combined with the risk that the electronic technology might fail mean that no local lender has been willing to advance money - hence the sale to Markovitch who has sufficient funds for the purchase in his London bank. Markovitch believes that the new technology will be a great success. The government is keen to see the new tech facility being developed, as it would make Guernsey a leader in this area of technology.

Question 1A

From an AML perspective, how would you deal with an individual generally? What additional issues arise with Soldan Markovitch and how do you deal with these?

(15 marks)

Facts

You are to assume that Victor Hugo LLP is properly able to act for Soldan Markovitch. It transpires that he is the beneficial owner and director of Litbaltic Funds Ltd ('Litbaltic'). This company is registered in Guernsey. The purchase and development of the tech facility will be in the name of this company. It has now been decided Litbaltic will fund the purchase and development. You can assume that the funds will come from a reputable and well-established bank in Gibraltar. The funds arise from the sale, 3 months ago, of an engineering facility in France. The current balance in Litbaltic's Gibraltar bank account tallies with the net proceeds of sale of the French facility.

Question 1B

From an AML perspective, how would you deal with Litbaltic Funds Ltd?

(5 marks)

QUESTION 2 (12 MARKS)

Facts

You are now to assume that Victor Hugo is properly able to act for both Soldan Markovitch and for Litbaltic. Once the land at the airport has been purchased and developed by Litbaltic, it receives an offer to buy the tech facility from AmeriTechnoLabs Ltd ('ATL Ltd'). The purchase goes ahead, and the new facility is a success.

In the meantime, Litbaltic has developed a new technology called 'Valdemar'. ATL acquires a licence to use Valdemar in its own facility. Victor Hugo was not involved with the contractual negotiations between Litbaltic and ATL.

There are problems with Valdemar and ATL now wishes to commence proceedings against Litbaltic.

ATL wishes to instruct Victor Hugo to act on its behalf in the litigation. Litbaltic firmly objects. Victor Hugo's position is that, first, it does not hold any information about the disputed technology and that, secondly, the commercial acquisition and litigation departments within Victor Hugo are completely separate.

Question 2A

What grounds would Litbaltic Funds Ltd need to establish to make good its objection. Based on what you have been told, what is Victor Hugo's professional obligation here?
(7 marks)

Facts

You are now to assume that the Royal Court has concluded that there is a risk of the kind that Litbaltic fears but that any risk can be mitigated.

Question 2B

On what basis might Victor Hugo be allowed to act against Litbaltic Funds Ltd?
(5 marks)

QUESTION 3 (10 MARKS)

Facts

ATL is now in negotiation for the purchase of land ('the new land'), again near the airport, from Lucy Hardward. To complete the deal ATL will be borrowing money from Puffin Bank (Guernsey) Ltd. The loan will be secured on the new land. ATL is keen to keep the lawyer's fees down as much as possible and wants Victor Hugo to act for as many parties to the transaction as possible.

Question 3A

What professional conduct issues arise here and what, if anything, can be done? Set out your reasons. (6 marks)

Facts

You are still acting for ATL.

ATL has two directors. Trent Ronson, is based in New York. Lando Forgman is based in Guernsey.

Having acquired the new land, ATL has had it valued at £1,250,000. Trent Ronson was originally reluctant to sell the new land for less than the amount for which it had been valued. ATL has now agreed to sell the new land to Sarnia (Property) Ltd ('SPL'). Negotiations between Lando Forgman and SPL have resulted in an offer of £1,000,000 for the new land. Forgman has assured Trent Ronson that this is SPL's best offer. Ronson has now authorised the sale of the land to SPL for £1,000,000.

After the sale of the land, Victor Hugo does not expect to do business with ATL again. Lando Forgman will be leaving ATL's employ as soon as the sale of the land is complete. Forgman is likely to be a very good source of work for Victor Hugo in the future and the firm wishes to retain the link with him, if at all possible.

One day, before completion, you discover that Lando Forgman has entered into a 'commission agreement' with SPL. The agreement provides that if ATL sells the land to SPL for £1,000,000, then Forgman will be paid £75,000 in commission.

Question 3B

Under what professional obligation is Victor Hugo in these circumstances? (4 marks)

QUESTION 4 (8 MARKS)

Until 6 months ago, Mr Gerard Carpentier ('Mr C') worked for Evereux Storage (Guernsey) Ltd ('Evereux') in its warehouse. On 6th January 2023, as he was walking across the warehouse floor, Mr C was knocked over by a forklift truck. The driver of the forklift had not been paying attention to where he was going, the forklift truck drifted out of its safe lane and Mr C was struck. Mr C says that he suffered a back injury such that he has been, virtually, bedridden and has been unable to work at all since the injury.

Victor Hugo is now acting for Mr C in his claim for damages for personal injury from Evereux. Mr C says that his employer was in breach of its duty to provide him with a safe system of work within a safe working environment. You think that liability will be admitted, it is the amount of damages which may cause difficulty. You have a supportive medical report which was prepared on 14th March 2023.

Question 4A

What costs advice should you be giving to Mr Carpentier at the outset of his claim against Evereux? Given that Mr Carpentier is almost certain to win, do you need to give any advice on the costs risk of litigation?

(4 marks)

Facts

You are continuing to act for Mr Carpentier ('Mr C').

You are about to draft the originating process when you decide to try an internet search for Mr C. This leads you to his social network page which is open for public viewing. On this page you find two recordings of Mr C. The recordings were made when Mr C was on holiday in Malta. Both recordings are dated 8th March 2023. On one occasion he is seen jumping into a swimming pool and on another occasion he is seen running along the beach. It is clear that, whatever injuries Mr C may have suffered on 6th January 2023, he had fully recovered by 8th March 2023. You note that as the medical report was prepared on 14th March 2023, your client may have misled the expert about his true state of health.

Question 4B

What are your professional obligations to the court and to Mr Carpentier in these circumstances?

(4 marks)

[End of paper]