

GUERNSEY BAR EXAMINATION

9.30AM, 24 APRIL 2018

PAPER ONE

CIVIL PRACTICE AND PROCEDURE

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 - 45 MARKS**
- **QUESTION 2 - 15 MARKS**
- **QUESTION 3 - 15 MARKS**
- **QUESTION 4 - 15 MARKS**
- **QUESTION 5 - 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)**

MATERIALS PROVIDED:

- 1. The Evidence in Civil Proceedings (Guernsey and Alderney) Rule, 2011**
- 2. The Royal Court Civil Rules, 2007**

QUESTION 1 (45 marks)

Priti Porter is the managing director of a trust company. Your firm has acted for this company for a number of years and Ms Porter is known to you in that capacity. You are aware that the company has quite a lot of Russian clients. Recently, she has sought your advice on a number of matters and she explained her situation in the following terms.

She likes fast cars. Despite the island's speed limit, she had always dreamed of owning an Aston Martin, especially as she frequently likes to take long weekends in France (when the ferry runs). Having been paid a significant bonus in 2016, she bought a new DB11 from Jacksons. With the extras she chose, although having negotiated strongly, she still spent £155,000.

Initially, everything was wonderful. Priti had several enjoyable trips to France. She did not mind getting stopped speeding on the motorway, because the fine was worth it for the thrill of having driven at 217 kph. However, on her fourth trip to France, her car broke down. She lost power and had to be towed to a nearby garage in Morbihan. Two days later, having been billed €8,256.64 for repairs, she was able to get back to St Malo for her re-arranged return journey. Her additional accommodation and subsistence costs were €735.53.

She complained to Jacksons. The garage said they would check the car over if she dropped it in. They also mentioned the manufacturer's warranty. When they looked at the car, their only comment was that everything was fine.

Priti was nervous about taking the car away again at that point. She chose to abandon two ferry bookings and did not use her prepaid accommodation, losing £1,063.50. In an effort to cheer herself up, when out with her husband, Pierre, they called in to Drawers, the goldsmiths, and bought a pair of antique diamond earrings, which cost £11,650.

The car continued to cause her problems. It went back to Jacksons on two occasions at the end of last year. First, the entire coolant system needed to be replaced. It was in the garage for a week. Then the remote locking operated through the key fob malfunctioned, with the result that Priti could not open her car. Luckily, she had been parked at the Airport, having just returned from a business trip to London, but it meant she had to take a taxi home that night and then into work the following morning before she called the garage. When the car broke down again recently, the mechanic she dealt with commented that it must be "*a Monday car*".

She has also recently been to Mappin & Webb about her earrings because, when she was out at an industry dinner at Beau Sejour, one of the ladies at her table commented that she had a pair just like Priti's earrings, which she had bought from Swarovski. Priti has been devastated to find out that her diamond earrings are not

diamonds at all, but rather made of crystal and apparently not antique either. They are worth less than £200. She went to the shop from which they were bought last year only to find a note in the window saying that the business had closed down.

Priti asks you to do whatever you can to help her. Ideally, she would like to return the car and the earrings and get her money back. Alternatively, she will sell the car secondhand and wants to claim all her losses from the garage, but will keep the earrings and claim the difference in value. You promise to undertake some enquiries and revert to Priti.

You discover that Drawers is the trading name of Denis Draper. He had rented the shop, with accommodation above, from Lara Lesbirel, who tells you that Denis has left and gone back to Droitwich, where he owns a house. She has given you the address of the house. You further discover that Denis is continuing to operate his jewellery business online, including offering several pairs of antique diamond earrings.

Having relayed this information to Priti in an e-mail, by return she seeks your advice about the steps that you will need to take in Guernsey to resolve matters in her favour. She also raises the question of costs and what prospect there is of her recovering her costs from Denis when she wins and what protection she can obtain in relation to costs in the meantime. She also raises the issue of the opinion of Mappin & Webb that her earrings are fake and how that aspect of the claim will be proved.

- 1.1 Draft an e-mail response to Priti setting out fully her options and the applications that may be pursued, including highlighting all the documents that will need to be prepared;
- 1.2 In the light of your advice, Priti instructs you to proceed. Draft a letter before action to send to Denis;
- 1.3 Outline what further information it is necessary, or at least desirable, to obtain from Priti;
- 1.4 Settle a Cause seeking the relief that Priti wishes to get in respect of her car;
- 1.5 Assuming the success of both her claims, describe briefly the means by which Priti could enforce each judgment and any risks that could arise;
- 1.6 How, if at all, would your approach to assisting Priti change if you had found out instead that Drawers is a Guernsey limited liability company that is currently subject to an administration order?

QUESTION 2 (15 marks)

You act for Blind Trust Co. Ltd., the defendant in a breach of trust claim commenced by Vladimir Voronsky, a London-based Russian oligarch, in 2017. The value of the claim runs to many millions of pounds, largely resulting from the drop in value of shares in businesses with which the Plaintiff's wider family was involved and which form part of the trust fund. The pleadings closed a couple of months ago and the Plaintiff has applied for a case management conference. By consent, that application has been adjourned twice, most recently to the Interlocutory Court sitting on 11 May 2018.

You are currently discussing with the Plaintiff's Advocate the timetable leading to a trial later this year or early in 2019. You have found the first stumbling block to be whether you can agree some key words for a limited electronic search of the parties' databases, but such an approach remains your preferred way of proceeding.

Your client's managing director, Priti Porter, wants you to find a way to avoid a trial at which she is likely to be a witness. She is deeply worried that any adverse publicity could be damaging to the company. She has also raised the increased costs of the company's insurance premiums should there be any findings made against it. She has explained that the board of directors thinks it would be more cost-effective to seek to compromise the action for no more than £150,000.

- 2.1 Draft for Priti's review any correspondence you consider could helpfully be sent to the Plaintiff's Advocate on all the relevant issues that arise from these latest instructions, and;
- 2.2 Prepare a short covering note for Priti highlighting any choices her company has at this stage.

QUESTION 3 (15 marks)

Just yesterday, Priti Porter forwarded to you a message dated 29 March 2018 that had been sent to her company's generic e-mail address and which had not been shown to her by her PA until late last week when she returned from her Easter holiday, which reads:

"Dear Ms Porter,

We are attorneys for several well-known movie stars, each of whom can properly be described as a household name but who have asked us, at least for now, not to reveal their identities. Very soon they intend to issue suit against Lokko Motion Pictures, Inc. in the United States District Court for the Central District of California both for breach of contract, principally concerning non-payment of their respective shares of royalties from motion pictures in which they appeared, and in several cases alleging breach of the duty owed to them concerning various unsavoury "incidents" the media would no doubt label as "casting couch" sexual abuse.

We consider that you are highly likely to have relevant evidence to give in relation to our clients' claims for unpaid royalties arising from your former employment with St Ouen Trustees in Jersey. In particular, we understand that you were instrumental in providing funding to Lokko through various trusts you administered and that on at least one occasion you attended a contracts meeting at which one of our clients were present and at which the formula for paying royalties was discussed at length. Accordingly, I would like to invite you to attend at our offices in Los Angeles on 16 May 2018 for the purpose of us taking your deposition. If you have any questions about the process, please feel free to call me in advance.

If you decline to attend, we are instructed to take steps to take evidence from you in your home UK jurisdiction and will be making an application to the court here in Los Angeles by no later than the end of May, all with a view to questioning you before the summer.

Yours sincerely,

Rick S.V. Pee"

In her covering message, Priti made it clear that she has no desire to visit the USA at any time, her business interests having moved to a more eastern focus since she moved to Guernsey and that she has learnt her lesson the hard way about the appalling treatment meted out in the film business.

- 3.1 Priti asks that you give her advice about whether she can be forced against her wishes to assist Mr Pee's clients and, if so, how that might come to pass, what would happen if she ended up being questioned, and what levels of protection she might be afforded.

QUESTION 4 (15 marks)

Also yesterday, Priti Porter telephoned you in a state of agitation because her attention had been drawn to a piece in the *Guernsey Press and Star* reporting that judgment for £1,750 had been awarded against her husband, Pierre, in favour of Raquel Robinson.

When you managed to calm her down a little, you gathered from Priti that the amount in question had been paid by her, on behalf of Pierre, by posting a cheque to Mrs Robinson's address in Southampton. The cheque had been posted, together with a curt handwritten note, on 9 April 2018. She had a proof of posting from Guernsey post office.

She further explained that she had not wanted to make any payment to "*that incompetent woman*" because Mrs Robinson had caused a huge amount of misery in her family, but had decided that it was simplest to do so in order that there be an end to any continuing dispute. It was time to move on. The amount of £1,750 was what Mrs Robinson claimed she had been due from Pierre for looking after Pierre's late mother. Mrs Robinson had been engaged to look after Mrs Porter at her home as a live-in carer. That engagement had been undertaken through an agency based in Southampton. However, the appointment of Mrs Robinson to this role had not been a success. She lasted only 10 days before Pierre had asked her to leave, feeling that his mother was being bullied and not at all well looked after. Mrs Robinson's day rate was £175. Although the agency documentation referred to her late mother-in-law as the client, Mrs Robinson had instead sent her invoice to Pierre, who was noted on the documentation as the person to contact. Pierre ignored the invoice and he also ignored Mrs Robinson's letter threatening to bring proceedings in the Petty Debts Court if payment had not been received within 7 days.

When Pierre had been served with the Summons to attend the Petty Debts Court on 12 April 2018, Pierre had been keen to attend and explain to the judge that he would not pay because of the way Mrs Robinson had treated his mother and he felt he had a larger claim against her anyway for all the distress she had caused. However, after a weekend of discussion with Priti, Priti had persuaded him that it was not worth their trouble to become embroiled in such a fight, especially as Pierre's mother had only been laid to rest last month. Priti had, therefore, written the cheque for what Mrs Robinson claimed and she understood that Pierre had telephoned someone at the Greffe to explain that Mrs Robinson's claim had been paid.

Priti wants Pierre's name cleared. They do not want him to have this judgment against his name because it could affect the family's credit rating. Accordingly, she seeks your advice as to what can be done. As far as she is concerned, Mrs Robinson has been vindictive in proceeding to take judgment against Pierre and Priti is not prepared to pay a penny more to Mrs Robinson, but will pay what it takes to clear Pierre's name.

4.1 Advise Priti as to all the options for the steps that could now be taken.

QUESTION 5 (10 marks)

5.1 Your practice's Head of Dispute Resolution hands you a copy of the following memorandum and asks you to prepare a draft response.

MEMORANDUM

From: HM Greffier
To: All firms of Advocates
Date: 17 April 2018
Subject: Technology in the Courts

The judiciary have tasked me with developing a plan to make greater use of technology in all our courts. We already have the benefit of the experience of handling the *Carlyle* case in 2016, but recognise that that was exceptional and may not provide the best model for run-of-the-mill cases. The Bar will be familiar with how we operate in the Court of Appeal.

Before I develop a plan to put to the judiciary, I would be grateful to receive any ideas that you think could usefully be incorporated, including identifying any changes to the Rules and/or practice directions that might be needed or at least appropriate.

I look forward to hearing from you by 30 April 2018.

J. Torode

END OF PAPER