

CONFIDENTIAL**CRIMINAL PRACTICE AND PROCEDURE 2023****THREE HOURS**

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

QUESTION 1 – 25 MARKS

QUESTION 2 – 25 MARKS

QUESTION 3 – 25 MARKS

QUESTION 4 – 25 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 QUESTION (if applicable)**

MATERIALS TO BE PROVIDED (consolidated versions)

- The Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003.
- The Codes of Practice Code D section 6 “Identification by Body Samples and Impressions” pages 155-160.
- Sexual Offences (Bailiwick of Guernsey) Law, 2020.
- The Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013.
- Bail (Bailiwick of Guernsey) Law, 2003.
- Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972 section 77.
- Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003.
- Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999
- The Disclosure (Bailiwick of Guernsey) Law, 2007

Please note that the facts are set out in separate parts with questions asked after each part, so you are advised to read each question in full before commencing your answer.

Question 1 [total 25 marks]

Facts Part One

Your client John Turner is arrested outside his house at 9.00 pm on Monday 13th March 2023. The allegation is that he attacked the victim Harold Pearce at the Dog & Parrott Pub, St Peter Port, Guernsey, on the night of Sunday 12th March 2023.

Mr Turner is put in the police car at 9.30 pm that same evening and arrives at the police station at 9.45 pm. He is immediately seen by the custody officer and is put in his cell at 10.15 pm, being deemed by the custody sergeant as too drunk to speak to his advocate. He is allowed to sleep until 7.00 am on Tuesday 14th March 2023. You are called to give him advice at 9.00am.

Question 1A

Mr Turner asks how long he is likely to be in custody. Advise him how long the police can hold him without seeking any extensions [2 marks].

Question 1B

Mr Turner has been in custody for near to the time limit you have identified in your above answer. Explain to him what will happen if the police wish to keep him for another 6 hours? What must be done? Who can do it? Of what must the police be satisfied before a decision can be made? [5 marks]

Facts Part Two

Because your client was arrested the day after the incident, the police have already visited your client's girlfriend, Hailey Parker. She has given a statement to say that Mr Pearce was being very aggressive and that your client punched him in self-defence.

At the police station you are shown a video on Hailey's mobile phone showing the incident taking place. Your client can be seen being threatened by Mr Pearce who can then be seen stepping towards your client waving a bottle. Your client then punches Mr Pearce twice on the side of the face.

When you speak to your client in the police station, he explains his version of events to you. It accords entirely with the video recording that you have seen. Your client is sober, articulate and credible. You think he will perform well in court. Your client asks

whether or not he should give a 'no-comment' in interview as he has seen it happen on TV and he says, "they always seem to get off when this happens".

Question 1C

Advise your client of his options in interview and what, if any, consequences would flow from him answering 'no comment' interview? In the light of the information given by your client advise him about whether he should answer police questions? [4 marks]

Facts Part Three

The police have taken your client's mobile telephone. It is locked with a passcode. In the interview the police officer asks your client to hand over the passcode and says that he will have no defence if he does not comply immediately. Your client asks for a break in the interview and during your confidential consultation he asks for your advice on what the officer said to him. He also wants to know if there is any action the police could take to try and get access to his phone.

Question 1D

Explain what advice you would give to your client about what the officer has said to him in interview. Advise him of any consequences if he refuses to give his passcode at this stage and any court applications the police could make to try and seek his passcode [5 marks]

Facts Part Four

At the police station, the custody officer tells you that Mr Pearce has been to A and E who have confirmed he sustained a fractured cheekbone and serious bruising around the eyes.

Question 1E

Your client asks you to explain what charges he could face, what court is likely to hear his case, what the maximum sentence is, and any relevant case law regarding the sentencing policy of the courts to offences of violence [4 marks].

Facts Part Five

Despite your best efforts your client is convicted after the trial. Ahead of the sentencing hearing, the prosecutor provides you with a victim statement from Mr Pearce. This includes sections where Mr Pearce says that he thinks your client should "go away for

life” and that they “should throw away the key.” There is also a request for compensation for medical fees for £2,300.

Question 1F

Explain to your client what a victim impact statement is, whether it can be presented to the court by the prosecution, whether you would take any issue with the comments mentioned above from Mr Pearce, and whether your client can be ordered to pay the compensation. For the purposes of this answer assume the matter stayed in the Magistrate’s Court [5 marks].

Question 2 [total 25 marks]**Facts – part one**

Your client Adam Le Marquand is arrested by the police for the offence of assault by penetration under section 12 of the Sexual Offences (Bailiwick of Guernsey) Law 2020. The allegation is that he had been kissing Samantha Ogier outside of a public house when, without warning, he put his hands inside her knickers and digitally penetrated her vagina. When you attend the police station it transpires your client has already been interviewed and denied the offence. You also discover that hand swabs were taken from him but there is no written record he consented, and your client says they just grabbed his hands and took them. Your client suffers with schizophrenia and you discover no appropriate adult has not yet been called to the police station.

Question 2A

Identify by reference to all relevant parts of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law 2003, as amended and the Codes of Practice (and in particular sections 69, 91 and 92 of the 2003 Law) any concerns you have about the actions of the police [9 marks].

Question 2B

Identify the elements of the offence of assault by penetration [2 marks].

Facts – part two

Your client is charged with the offence of assault by penetration and remanded in custody by the police because he has a similar previous conviction, and he also has a previous conviction for failing to answer bail. He is local, a mechanic and runs a local garage business with 4 employees. The prosecution indicate they will oppose bail.

Question 2C

Your client asks for you to apply for bail. Summarise the points you would make in seeking bail on his behalf, dealing with the likely prosecution approach to bail and what grounds in the bail law they may refer to. Advise your client of his options if bail is refused. [8 marks].

Facts – part three

The case proceeds to the Royal Court and despite your efforts your client is convicted. The prosecution indicate that they will seek a Sexual Offences Prevention Order (a SOPO) under the Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013 (the 2013 Law).

Question 2D

Advise your client whether he will be subject to notification requirements under Part II of the 2013 Law, what this involves and how long this could be required [3 marks].

Question 2E

Explain how the prosecution apply for a SOPO pursuant to Part IV of the 2013 Law, and what the court has to be satisfied of before granting one [3 marks].

Question 3 (25 MARKS)**Facts**

Your client Georgia Le Page has been arrested in Alderney on suspicion of being concerned in the importation of a Class B drug. The Guernsey Border Agency officers advise that your client has arrived in Alderney on a private boat. She was searched and in her rucksack was a bottle of whisky which has been subject to preliminary testing by the States Analyst and it contains ADB-Butinaca, which is a synthetic cannabinoid (a Class B Drug). The total liquid in the bottle has been weighed by the analyst and it is 750 grams.

The GBA advise your client has already been interviewed and all she said was, 'I had the drugs on me. I'm sorry, I made a terrible decision.' She then asked for an advocate when told about what likely sentence she was likely to receive if convicted. When you attend and speak to her, she is interviewed again and answers no comment. She is then charged with the offence of being knowingly concerned in the importation of a class B controlled drug.

Your client is a Latvian national. English is her second language, although it is the language that she uses at work. The first interview took place without an interpreter being present. No contact was made with the Latvian honorary consulate when she was arrested.

Question 3A

Your client asks about the court system in the Bailiwick of Guernsey and which court will deal with her case. Advise her of all possibilities regarding the progress of her case through the courts of the Bailiwick. [6 marks]

Question 3B

Assume your client's case has been committed to the Royal Court. Your client asks if there is anything she can do to challenge the admissibility of her interview. Advise her [6 marks].

Question 3C

Your client instructs you that she thought the whisky bottle only contained whisky and that she had been given the bottle by someone who has asked her to pass it on to a friend in Alderney. She said that friend would meet her at the harbour. Advise your client if she has a defence to the charge [3 marks]

Question 3D

Your client is convicted, and the prosecution serve on you a letter indicating that they will be asking the court to consider a recommendation for deportation at the same time your client is sentenced. Advise your client of the process involved and what the court will take into account regarding whether they should make a recommendation for deportation [5 marks].

Question 3E

Your client asks you to advise her as to the likely sentence and what factors the court will take into account. She asks if anyone has been convicted of importing this substance before and what sentence they received. Advise her [5 marks].

Question 4 (25 marks)**Facts part one**

Gbank, the Guernsey branch of an international private bank, has a client, Mr Z, a national of Yland who moved to Guernsey ten years ago and opened the account with Gbank soon afterwards. The initial deposits in the account, which were very large, were said to be the proceeds of Mr Z's widget making business in Yland.

Gbank's new money laundering reporting officer, Fred Stickler, has recently been reviewing Mr Z's file. He has noticed that a year before moving to Guernsey, Mr Z had been prosecuted in Yland for fraud and failure to prevent bribery. He was acquitted of fraud, which some media reports had attributed to failings by the Yland police in gathering the necessary evidence but convicted of failure to prevent bribery. Fred Stickler has just attended a financial crime presentation, where he learned for the first time that there are money laundering offences in Guernsey's legal framework, and he also learned that the States of Guernsey brought into force legislation last month to create a new offence of failing to prevent bribery. This information is troubling him, so he wants advice on how Guernsey's money laundering offences might apply to the funds in Mr Z's account.

Question 4A

What do you advise him [5 marks]?

Facts part two

Having considered your advice, Fred Stickler's concerns about Mr Z's account are not assuaged. He wants to know if there is anything he could or should do now about these concerns, and how this might affect his professional obligations to Mr Z.

Question 4B

What is your advice [5 marks]?

Facts part three

The Guernsey law enforcement authorities are carrying out an investigation into Mr Z and have received intelligence indicating that he has an account with Gbank. They therefore want to obtain evidence to confirm whether this is the case and if so, to see what information Gbank has about the source of funds in the account. They also want to trace the movement of funds out of the account.

Question 4C

What steps can they take to obtain this information? [5 marks].

Facts part four

Mr Z has now been convicted of a number of offences in the Royal Court. Fred Stickler has heard that Mr Z's conviction is likely to lead to the confiscation of some of his assets but is curious about the process for this because he is aware that there is no longer very much money left in Mr Z's account, and although Mr Z recently tried to raise funds by selling his house to Mr X, he received a great deal less for it than Fred Stickler would have expected.

Question 4D

Explain the process that will apply to confiscating Mr Z's assets. [5 marks].

Facts part five

Fred Stickler has heard that Guernsey's compliance with anti-money laundering standards is soon to be evaluated by an international body. He wants to understand more about this so has asked you to explain to him about the evaluation process and how Guernsey fits into it.

Question 4E

What do you tell him? [5 marks]