GUERNSEY BAR EXAMINATION

9.30 AM, 12 MAY 2020

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 - 25 MARKS**
- **QUESTION 2 - 9 MARKS**
- **QUESTION 3 - 7 MARKS**
- **QUESTION 4 - 14 MARKS**
- **QUESTION 5 - 15 MARKS**
- **QUESTION 6 - 17 MARKS**
- **QUESTION 7 - 6 MARKS**
- **QUESTION 8 - 5 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) Rules, 2011**
2. **The Royal Court Civil Rules, 2007**

QUESTION 1 (total 25 marks)

<u>Puffin Bank Ltd v Granite of Guernsey Ltd</u>

Puffin Bank (Jersey) Ltd ('Puffin') is based on and registered in Jersey. Puffin specialises in making loans to local businesses which are trying to expand. Granite of Guernsey Ltd ('GG') is such a business. It has discovered a way to cut granite into easily moved slices which are suitable for the steps of prestige buildings.

On 29th October 2019 Puffin loaned £100,000 to GG under a written loan agreement of the same date. The loan agreement complied with all the formalities required by the laws of Guernsey. The agreement was signed by Simone Puffin the managing director of Puffin and by Pierre and Lancelot Plathorn the directors of GG.

The loan was to be repaid in 10 equal monthly repayments due on the 1st day of each month, commencing on 1st December 2019. The loan agreement provided that if GG missed a single repayment then Puffin could call in the entire loan by written notice. Puffin has told you that the first payment was not made and written notice calling in the entire loan was served on GG on 2nd January 2020. The entire £100,000 is therefore due for repayment. GG has made no payments at all under the loan.

Puffin wishes to bring a claim for £100,000 (plus interest) against GG (under the loan agreement).

You check the loan agreement which shows that Puffin's address for service is 294 High Street, Saint Peter Port, Guernsey. You note that 65 Royal Court Crescent, St Peter Port is given as GG's address for service.

1.1 Draft a letter of advice setting out the options for Puffin, including how this might be resolved out of Court; the Court process including which Court this matter should be commenced in; when proceedings are formally commenced; the method for service; and the cost consequences associated with everything you consider the Plaintiff should be advised on prior to commencement. **(13 marks)**

1.2 Draft a detailed cause seeking relief for Puffin against GG. Ensure that the claim complies with the relevant formalities. **(12 marks)**

QUESTION 2 (total 9 marks)

<u>New facts: Puffin Bank Ltd v Granite of Guernsey Ltd.</u>

You are continuing with the claim of Puffin Bank Ltd v Granite of Guernsey Ltd.

Having issued proceedings, Puffin discovers that GG owns the De Montfort hotel in St Peter Port. Having made enquiries Puffin discovers that the hotel is a success but Puffin has heard rumours that GG has may have plans to sell it.

2.1 What steps can Puffin take to best preserve its position pending judgment? **(2 marks)**

2.2 Advise Puffin in bullet point form on enforcement of a judgment if Puffin were to be successful. (**7 marks)**

QUESTION 3 (total 7 marks)

<u>Puffin Bank Ltd v Granite of Guernsey Ltd.</u>

You are continuing with the claim of Puffin Bank Ltd v Granite of Guernsey Ltd.

You receive a telephone call from Simone Puffin the managing director of Puffin. She has heard that there is a traditional Guernsey customary law remedy called the clameur de haro. She is keen on using it.

3.1 What advice would you give to Simone about the use of the clameur de haro for this claim and set out the steps which must to be taken by a Plaintiff to rely on the clameur de haro and engage the jurisdiction of the Royal Court?

(**7 marks)**

QUESTION 4 (total 14 marks)

<u>New facts: Puffin Bank Ltd v Granite of Guernsey Ltd.</u>

You are now to suppose that Granite of Guernsey Ltd is in fact a <u>Panamanian</u> registered company with no presence on Guernsey at all. The agreement contains a clause which although not well drafted appears to provide for disputes to be subject to the exclusive jurisdiction of the Royal Court of Guernsey.

Puffin has obtained permission to serve GG out of the jurisdiction in Panama.

4.1 If GG failed to serve a defence in time, should Puffin apply for an unless order? Explain your reasoning? **(2 marks)**

<u>Further Facts</u>

Notwithstanding your previous answer you are now to suppose that GG appeared when the Cause was tabled and that it served a defence.

In its defence GG says:

'*It is denied that the Royal Court has jurisdiction in this matter. Jurisdiction lies with the Panama courts*.'

GG now wishes to proceed with a challenge to the act of service out on the basis set out in the defence.

4.2 Advise Puffin on what will be required by GG to challenge the permission to serve outside the jurisdiction and what does it have to demonstrate to be successful? **(12 marks)**

QUESTION 5 (total 15 marks)

New facts: Puffin Bank Ltd v Granite of Guernsey Ltd

You are continuing to act for Puffin in its claim against GG. Regardless of your previous answers you are to assume that the case is proceeding in Guernsey in the Royal Court. GG has served a defence. This essence of the defence is that the loan is not due to be repaid in part or in total.

Puffin says that this is a bogus defence and that it is clear from the loan agreement that it can have its money back. It is not prepared to wait any longer. You are asked to advise.

5.1 What application(s) may Puffin make that might achieve Puffin's objective? Include the procedural and evidential requirements and the merits of taking such action. **(15 marks)**

QUESTION 6 (total 17 marks)

New facts: Puffin Bank Ltd v Granite of Guernsey Ltd.

You are continuing to act for Puffin against GG. Notwithstanding any previous advice you may have given, the case continues.

You are now to assume that GG has joined Luxury Condos Ltd (LCL) (which is based in Guernsey) as a third party. The basis of the third party proceedings is that LCL is contractually obligated to indemnify GG for any payment which GG is required to make to Puffin under the original loan agreement.

The court orders that Puffin and GG and LCL shall give disclosure of documents.

6.1 Set out the advice (in bullet point form) you will give Puffin about preservation of evidence, Puffin's obligations in relation to disclosure and what applications might be made if Puffin considered that GG has not fulfilled their obligations? **(6 marks)**

6.2 What obligations are placed upon an Advocate in these circumstances? **(4 marks)**

Further Facts

As a result of disclosure a document has been received from GG which would be very useful in a multi-million pound claim that the parent company of Puffin, Puffin (UK) Limited has against LCL and which is currently before the Royal Court. Puffin (UK) Limited, is a key client of the firm and send you a lot of business and the billings you receive from Puffin form the basis of your personal case to be made a partner of the firm. Having heard about this document from your client, the MD of Puffin (UK) Limited has been on the phone to one of your colleagues who has been helping Puffin (UK) Limited in their claim demanding that your colleague use a copy of this document to help its case. Your colleague asks what he should do.

6.3 What advice would you give your colleague? **(4 marks)**

Further Facts

You have been looking through the documents which were provided by way of disclosure received this morning from GG's advocates, Petit Bot Advocates. Just before you send them to the client, you notice the following email from Jan Le Page the Senior Partner of Petit Bot Advocates to one of GG's directors, Lancelot Plathorn:

From Jan.LePage@PetitBot.com

To Lancelot Plathorn

Subject: The Puffin claim

Lance

Great to see you at L'Ancresse the other day although frankly my dog could have played better than I did!

Anyway I have had a look at the summons you have received from Puffin. There are lots of points we can make in your favour and we can drag this out for ages but frankly I don't think that you have a defence to their claim and you are just putting more money in my pocket unnecessarily (although great for my new pool plans!). Even if we join LCL its going to be a struggle as my view is that the indemnity is not enforceable. I know you hate Puffin (and you have good reason) but what about mediation at least that way you might get away with paying less if we can do a deal.

Let me know if you want to chat this through.

Best

Jan

You punch the air but then you hesitate.

6.4 What should you do about this email? **(3 marks)**

QUESTION 7 (total 6 marks)

New facts: Puffin Bank Ltd v Granite of Guernsey Ltd.

You are continuing to act for Puffin against GG which, in turn, is continuing to proceed against LCL (the third party). Notwithstanding any previous advice which you may have given, the case continues.

It has come to your attention that LCL (the third party) wishes to rely upon the evidence of the following:

(i) Mrs Avredi who has died but left behind a signed witness statement;

(ii) Mr Binder who is now in the United States. He has sent a letter containing some important information. The letter was signed. Mr Binder refuses to travel to Guernsey but is easily reached by electronic means of communication.

Although the third party proceedings do not directly concern your client, Puffin is interested to know what might happen in relation to this evidence.

7.1 If the above situation were to continue then what would be the evidential status of each document and how might the court deal with it? **(4 marks)**

7.2 More specifically, on what basis would the court consider the value of the evidence of Mrs Avredi? **(2 marks)**

QUESTION 8 (total 7 marks)

New facts: Puffin Bank Ltd v Granite of Guernsey Ltd.

You are continuing to act for Puffin against GG. That company is continuing to proceed against LCL (the third party). Notwithstanding any previous advice which you may have given, the case has continued to trial.

After a two day trial the jurats found that:

(i) on the facts, there were no sums due from GG to Puffin;
(ii) Puffin's witnesses were unsatisfactory and the evidence of the Defendant's witnesses was to be preferred.

You examine the reasoned judgment. You are satisfied that the judge performed her role correctly, that the Plaintiff's case was lacking important paperwork (so that it could not be proved that any money was due) and that the Plaintiff's witnesses kept changing their stories whilst they were giving evidence.

Nevertheless Puffin is adamant that it wishes to appeal. It believes that a higher court will understand the commercial realities of the case and overturn the lower court's decision.

8.1 What test will the higher court apply in deciding the appeal and will leave be required? How is the test likely to be applied in this case and what advice would you give Puffin about their likelihood of success and the costs implications based on your advice on likelihood of success? **(7 marks)**

END OF PAPER