

GUERNSEY BAR EXAMINATION

9.30AM, 26 APRIL 2017

PAPER TWO

CRIMINAL 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 – 20 MARKS**
- **Question 2 – 25 MARKS**
- **Question 3 – 25 MARKS**
- **Question 4 – 20 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 Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999, as amended**
2. **The Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003**
3. **The Criminal Justice (Fraud Investigation) (Bailiwick of Guernsey) Law, 1991, as amended**
4. **The Criminal Justice (International Co-operation) (Bailiwick of Guernsey) Law, 2001, as amended**

QUESTION 1

(total - 20 marks)

- 1.1 You act for Peggy. She is charged with obtaining property (to the value of £2000) by deception and intends to plead guilty. She tells you that earlier this year she was convicted of a shoplifting offence in respect of which she had also pleaded guilty and was sentenced to undergo 100 hours of community service as a direct alternative to 3 months imprisonment and was also ordered to pay £250 compensation. She has only completed 60 hours of that order and has not paid a single penny towards the compensation order as she says her benefit money will not stretch that far. Advise Peggy in general terms how the court is likely to approach its sentencing decision. **(3 marks)**
- 1.2 As duty advocate you see Sue who has been charged with assault. She is not local and only came to Guernsey for a hen party over the weekend. Because she does not have a local address she was kept in custody to await her first appearance in court after being charged. She tells you that she wants to plead not guilty to the offence and that she wants her case heard in the Royal Court. Sue also tells you there are lots of witnesses who will support her case. Unfortunately they all live in England and have now gone back there. She does not think they will be prepared to ever return to Guernsey. The prosecution indicate they are unlikely to be ready for trial for at least two months and want your client to be remanded in custody until then. Sue wants to return to England immediately as she will lose her job if she does not. Sue has a number of previous convictions, including one for escaping from lawful custody. Advise Sue on the various issues raised and how they might be dealt with. **(4 marks)**
- 1.3 Buddy has been arrested earlier today for child abuse offences and is being detained at the Police Station. You are aware he has asked to see you but when you arrive at the station the officer in the case, DC Lenfestey, refuses you access to him. He says that if he allowed you to speak to Buddy now it might *“interfere with on-going enquiries into numerous serious offences”* and he is concerned that no potential witnesses are spoken to before the Police do so. He also explains that Buddy is actually in the process of being interviewed by his colleague DC Ozanne and cannot be interrupted. He tells you that Buddy is *“singing like a bird so there is not much you could do, anyway, and it would upset the flow of the interview if I interrupted it.”* He says he will therefore let you see Buddy later in the day, once the interview has concluded. Upon what grounds can the Police deny you access to Buddy and having been refused access by DC Lenfestey what immediate action might you take? In relation to the admissions made by Buddy in interview to what extent can the prosecution subsequently rely upon these if he is later charged? **(3 marks)**

- 1.4 Holly is the subject of a suspended prison sentence for shoplifting. She now faces a new allegation of driving with excess alcohol and the Police evidence suggests that at the time of driving there were 115mgs of alcohol in 100 millilitres of breath. Advise Holly on the possible outcomes, assuming she is convicted of the drink driving offence. **(2 marks)**

- 1.5 You represent Marie who is charged with disqualified driving. Although she tells you she committed the offence she wants to plead not guilty. Can she do so and can you continue to represent her?

A week later she tells you she now intends to plead guilty, which she does. Because the normal judge has called in sick the Bailiff is sitting instead. Having heard the prosecution facts and your mitigation he sentences Maria to 4 months immediate imprisonment. The following day you discover that the maximum sentence that could have been imposed in the Magistrate's Court is 3 months. What action do you take? If there is to be an appeal, in which court would it be heard and how would the court be constituted? Are there any other issues that arise from the above facts? **(4 marks)**

- 1.6 You represent Donny. He is charged with assault. After being arrested he was seen by the Police doctor who assessed Donny as being "*a bit drunk but fit to be interviewed*". A short while later officers interviewed Donny under caution. He did not ask to consult with, or be represented by, an advocate. When you eventually receive the disclosure papers from the prosecution it is clear the recording equipment malfunctioned after 10 minutes or so and that the interview with Donny had to be halted for another 15 minutes whilst the officer got the machine working again. When the interview recommenced Donny was not re-cautioned and after some hesitation made full admissions. The disclosure papers suggest that Donny did not leave the interview room whilst the repairs were being undertaken by the interviewing officer but a couple of officers not connected with the case came into the room to see if they could assist in getting the machine to start working again. Donny wants to see if you can get the whole of the interview process excluded. What advice do you give? **(4 marks)**

QUESTION 2

(total - 25 marks)

You are asked to advise the directors of ABC Trustees Ltd (ABC) who act as trustee of the Cinderella Trust, which is a discretionary trust. The settlor of the trust is Petrov Kurakof who, although Russian by birth, currently resides in Venezuela. The possible beneficiaries are described as including members of Kurakof's family (mainly his children) and the Red Crescent. The value of the trust fund is in excess of \$300 million and consists of a mixture of residential properties in Switzerland and Grand Cayman, cash deposits in Lichtenstein and substantial gold deposits (around \$15 million) held in Guernsey. According to ABC they assumed responsibility for the trust when they acquired the business of LMN Trustees Ltd (LMN) in 2016. The original trustees had been XYZ Trustees Ltd (XYZ) but this changed when they were bought out by LMN in 1999.

The background files that ABC inherited when they acquired LMN were pretty thin but it was clear that any decisions made by either LMN or XYZ as trustees had always been made at the instigation and direction of Petrov Kurakof. There was no evidence of any due diligence having been done by either LMN or XYZ and the files hold little more than the details of the actual investments held by the trust together with a number of loan agreements for the benefit of Petrov, none of which have been repaid. There are no records that explain the background to why the trust was set up although it is clear that one of the directors of XYZ (now dead) had been a personal friend of Petrov. Four weeks ago, your client became aware through open intelligence that the US Department of Justice (USDOJ) has taken a keen interest in Petrov and want to extradite him from Venezuela, where he lives, on charges of grand theft, fraud and money laundering. Unfortunately, Venezuela has no extradition treaty with the USA and the Venezuelan authorities are more than happy for Petrov to continue living in their country for as long as he wants, given his friendship with a number of their senior politicians and the fact he generously supports a number of charities in that country. In short, the intelligence suggests that whatever is the outcome of their investigation the US authorities have little chance of ever getting him to their jurisdiction.

ABC are now approached informally by the Economic Crime Division of the Guernsey Border Agency (GBA) who advise they have received a letter of request from the USDOJ in which is sought full information about the Cinderella Trust and its investments. The local investigators indicate they will be back shortly to make a formal demand for this material. After they leave, the directors of ABC urgently look at the files and realise their pre-acquisition checks failed to spot this potentially toxic matter and that since ABC formally took it on their staff have done little more than keep the portfolio ticking over.

- 2.1 What immediate action do you advise the directors of ABC to take?
(3 marks)
- 2.2 What form(s) and under what legislation might the “formal” request or demand for information by the local investigators take?
(6 marks)
- 2.3 Can it be opposed and, if so, how can that be done and at what stage? What arguments might be raised? Would you advise that there should be opposition?
(3 marks)
- 2.4 To what extent might any material obtained on behalf of the USDOJ be used in a local prosecution against your client?
(3 marks)
- 2.5 In addition to seeking material the GBA now want to restrain the gold deposits in Guernsey – they do so on a twin track basis, namely on the back of the USDOJ’s letter of request and also as part of their own investigation into the Cinderella Trust and ABC’s conduct in the matter. How might the GBA do this? Can it be opposed and, if so, at what stage?
(4 marks)
- 2.6 The GBA, as part of their investigation, also seeks the restraint of assets of the Cinderella Trust that are outside of Guernsey – can they do so, and if so, how?
(3 marks)
- 2.7 During the course of the investigation the case is looking pretty strong and intelligence suggests that Petrov is preparing to shortly make a fleeting visit to Switzerland to visit one of his properties. The intelligence is considered reliable. The GBA see this as an opportunity to bring Petrov to Guernsey for him to be interviewed and then possibly charged to face trial here. How might this be achieved?
(3 marks)

QUESTION 3

(total - 25 marks)

You act for Clint, who is on holiday in Sark with his parents. He is aged 17 years and has been charged by the Guernsey Police with an offence of raping Molly, a 15 year old girl, who resides in Sark.

- 3.1 On what basis can Guernsey Police investigate offences that arise in Sark?
(2 marks)
- 3.2 In which court would the matter first be heard and, assuming Clint intends to plead not guilty, in which court will the trial be heard and how will the case get there?
(3 marks)
- 3.3 Due to the seriousness of the allegation you are asked by Clint's parents to prepare his defence in conjunction with an English barrister who specialises in rape cases and whom they would also like to assist you during the trial by acting as your junior. Is such an arrangement possible and how, if at all, can the barrister participate in the trial?
(2 marks)
- 3.4 On the morning of his trial, Clint (who by now is aged 18 years) decides to dispense with your services and to represent himself. To what extent is he able to do this?
(2 marks)
- 3.5 As part of his defence, Clint wants to suggest that Molly has had a number of boyfriends in the past and has slept with at least three of them. How might this evidence be admitted?
(3 marks)
- 3.6 Two weeks before the trial is due to start the prosecution tell you that Molly has gone missing and if she does not turn up on the day the trial is due to start, they intend to apply for her statement to be read to the court instead. On what basis might they do this and what objections would you raise, if any?
(4 marks)
- 3.7 The trial starts with 7 Jurats on the bench. During the trial one of them falls ill and cannot continue to hear the case. You become aware that of the Jurats who have not sat on the case two are conflicted (because they are friends of Clint's parents), one is gravely ill and cannot sit, and the others sat on another case last year involving Clint when he was being prosecuted for fraud in which the judge had said when sentencing Clint: *"As far as the Jurats are concerned you do not have an honest bone in your body and you have told this court a complete pack of lies"*. Can the trial continue and/or a new one started?
(3 marks)

- 3.8 As it turns out, a new trial is started with 8 new Jurats. At the end of the trial they are evenly split in their verdict. What happens now? **(1 mark)**
- 3.9 Assume that Clint is convicted. What public protection orders can the court make as part of the sentencing process? **(3 marks)**
- 3.10 Clint wants to appeal his conviction. On what grounds may he do so? **(2 marks)**

QUESTION 4

(total - 20 marks)

- 4.1 You act for Jeremy who, whilst investigated originally by the Guernsey Border Agency for drug trafficking offences, has only been charged with a single offence of being in possession of controlled drugs of Class A. He intends to plead guilty; however, as Jeremy has previously been convicted of a number of drug related offences in the past the case has been sent to the Royal Court. As part of the investigation £50,000 in cash was seized from a hiding place within Jeremy's flat, which the prosecution indicate they want to confiscate as the proceeds of crime. Jeremy tells you that the money is winnings from playing cards. Explain how the prosecution might seek to confiscate the money and what tests the court would apply? **(6 marks)**
- 4.2 You represent Teresa on a charge of obtaining property by deception. She is convicted and when asked by the judge if Teresa has any convictions the prosecutor, who is new, says she does not. On that basis the judge decides not to adjourn for a Probation Report but instead sentence Teresa that day without one. You know, however, that she has numerous previous convictions, the most recent of which resulted in a suspended prison sentence that is still active. How do you deal with this? **(2 marks)**
- 4.3 You represent Tim, a German national, who has lived in Guernsey for the last three years. He lives on his own in rented accommodation. He has a child whom he fathered after a one night stand with a local woman. He does not see the child but does make a voluntary maintenance payment of £20 per week. Tim has just been convicted of a serious indecent assault on a young female, aged 14 years and the case has been adjourned for sentence. The prosecution indicate to you, on behalf of the Immigration and Nationality Department, they will be seeking to have Tim deported at the end of the inevitable custodial sentence that he is going to receive when he returns to court next month. Describe the process by which the Court will consider the issue of deportation and, assuming it considers Tim should be deported, how that decision may be challenged. **(6 marks)**
- 4.4 You act for Nigel whose friend Jacques is facing serious drug importation charges. Jacques has been remanded into custody by the court but which indicated at the time of doing so that if a £10,000 surety could be found it might then consider granting him bail. Nigel has now been asked if he would stand as a surety and seeks your advice. Nigel owns a house in which there is £100,000 equity. He also has £5000 in the bank and a car valued at around £14,000. Explain to Nigel how he might stand as a surety for his friend, including the procedure involved and the duties and risks he would face, including how the surety might be enforced. **(6 marks)**

QUESTION 5**(total - 10 marks)**

You work for the prosecution. You are approached by Guernsey police officers who want to know how they can undertake a search of the offices of a local firm of advocates. They suspect that one of the lawyers in the firm has been making false legal aid claims. There are five fee earners at the firm. One is definitely under suspicion and another they are not sure about. The officers are confident, however, that the other three are not involved as they act only for wealthy corporate clients. The officers are concerned that if an approach is made in advance to the firm or any individual within, it important material might be hidden or destroyed. The officers believe they will only be able to properly investigate the matter if they get full access to all the files that relate to legal aid clients, including existing live matters, for the last five years. They therefore anticipate the amount of material involved will be significant.

Advise the officers as to how the material they are seeking access to might be obtained and the practical and legal issues involved, including what issues might arise in terms of how any material is handled and looked at by the investigators.

(10 marks)