

GUERNSEY BAR EXAMINATION

13.30PM, 16 MAY 2025

PAPER ONE

CIVIL PRACTICE AND PROCEDURE

THREE HOURS

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

- QUESTION 1 – 18 MARKS
- QUESTION 2 – 16 MARKS
- QUESTION 3 – 12 MARKS
- QUESTION 4 – 10 MARKS
- QUESTION 5 – 16 MARKS
- QUESTION 6 – 10 MARKS
- QUESTION 7 – 12 MARKS
- QUESTION 8 – 06 MARKS

MARKS WILL BE GIVEN FOR REFERENCES TO APPLICABLE LEGISLATION AND CASE LAW.

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 QUESTIONS (if applicable)

MATERIALS PROVIDED:

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

Golden Dairy (Guernsey) Limited (“GDG”)	whose registered office is 2 Rue des Cambrees, Les Sages, Guernsey. The company owns four dairy farms in the south of the island. The company supplies dairy produce for use in food production.
Animale Verdi SRL (“AV”)	whose registered office is via Canosso, Luzzara, Italy. The company specialises in the production of organic animal feed which they export to farms throughout Europe.
Forest Storage Limited (“FSL”)	whose registered office is Unit 6, Forest Industrial Estate, Rue des Fosses, Forest, Guernsey. The company provides storage facilities for agricultural products.
Licatas Ice Creams and Desserts Limited (“LICD”)	whose registered office is 4 Borough Yards, London, SE1 5PA.

The Facts

You are to assume that you are an Advocate in Victor Hugo LLP and have been instructed by GDG with respect to a potential claim for breach of contract against AV.

GDG decided last year to convert its largest farm in Les Sages to organic so that it could offer a fuller range of products to its customers. This strategy had some success and GDG entered into a contract with LICD to supply organic milk and cream for its new range of artisan Italian gelato. This was a lucrative contract as LICD was expanding and opening a chain of gelateria and dessert parlours throughout England.

As part of the process of becoming organic the farm needed to change its animal feed supplier so that it could obtain the necessary certification that its produce was organic. After some research, GDG decided to approach AV, who are a leading supplier of organic animal feed in Europe.

GDG's managing director, John Wilson, negotiated the contract with Luigi Rivera from AV. During their discussions over the contract, John referred to the contract with LICD and explained that, as a result, GDG would have an ongoing and growing need for the feed. He used this to negotiate a lower price for the feed.

The contract was finally signed on 22nd October, 2024 with delivery of the feed being set for 18th November, 2024. As Luigi needed to check the arrangements for delivery of the feed and arrange the necessary import licences, he visited Guernsey and signed the contract at GDG's registered office in Les Sages. The contract is governed by Guernsey law.

The purchase price was £200,000 for two tons of the feed. This was to be delivered by AV in their own lorries which are specially adapted to transport animal feed safely.

Aside from price and delivery, the contract contained a number of express terms relating to the quality and use of the feed. In particular, the contract provided that AV would ensure that the feed would have the necessary current certification from an EU approved organic control body. The contract therefore provided that the process for production of the feed would be carried out in a manner that ensured its integrity and safety as a product.

Further, the contract contained a term that the feed would be free from contaminants and other substances harmful to livestock. It was also provided that the feed would be fit for the purpose of feeding Guernsey cows who produced milk for human consumption.

The feed was duly delivered by AV in two lorry loads on the 18th November. One lorry load of the feed was delivered directly to the farm in Les Sages. The second lorry load was delivered to FSL. The feed was to be stored by FSL for a week whilst GDG completed the cleaning of the silo where the second lorry load of feed was to be finally stored.

GDG paid the purchase price of the feed on the 19th November and received confirmation from AV that the payment had been made.

GDG started to use the feed straightaway and continued to do so until the beginning of December when they noticed that a large number of their herd became ill. The first cow died on the first of December and in the week that followed GDG lost over half their herd.

The deaths were investigated by vets from the States of Guernsey to establish whether there was a threat to humans or other livestock on the island. This took three months, as samples had to be sent for analysis to a laboratory in England and all potential causes of the deaths had to be considered.

The farm was closed during the investigation. During this time, all the milk and feed on the farm was destroyed as a precaution.

Eventually, the States' vets concluded that the deaths had been caused by toxins in the feed and that there were no wider issues arising from the incident. However, they did not identify the cause of the toxins.

The effect on GDG has been devastating. They have suffered a loss of over half the herd which will cost £100,000 to replace. In addition, they lost ongoing profits from existing contracts which they were unable to fulfil of £150,000 and £200,000 when LIDC terminated their contract. Finally, they had to pay £100,000 to replace the feed that was destroyed. GDG's insurance company has paid them £50,000 towards the lost cows but the policy does not cover any other losses.

GDG believe strongly that the feed that they bought from AV was contaminated when they bought it, as they observed all the necessary precautions when storing and using the feed. They, therefore, obtained a report from an expert whose initial conclusion was that the toxins were caused by spores in the feed. The incubation period of the spores was such that the feed must have been contaminated before it was delivered to GDG. The expert did, however, say that they would need to carry out further tests before reaching a final conclusion.

On the basis of the report, GDG contacted AV about the matter but the correspondence between the two parties did not result in any agreement. GDG have therefore now instructed you to pursue a claim against AV for the losses that they have suffered.

QUESTION ONE (18 Marks)

Facts

You take initial instructions from John Wilson from GDG and explain to him the potential costs in pursuing the matter. He asks whether there is anything that can be done to settle the matter without proceedings.

Question 1A

What advice would you give your client about possible means of settling the case prior to proceedings?

Facts

You are unable to settle the matter. Your client, therefore, instructs you to commence proceedings against AV in order to recover the losses that they suffered.

Question 1B

Draft a Cause with respect to the proceedings brought by Golden Dairy (Guernsey) Limited against Animale Verdi SRL

You are to assume that the insurance company will be pursuing Animale Verdi SRL separately to recover the payment out that they made.

You should not use your own name when drafting the Cause

[Total: 18 Marks]

QUESTION TWO (16 marks)

Facts

You have now issued proceedings on GDG's behalf. The only address you have for AV is their registered office in Luzzara in Italy.

You can assume that all the relevant witnesses apart from AV's employees are based in Guernsey.

Question 2 A

What step do you need to take now with respect to service? Outline the relevant test and the arguments you would make on GDG's behalf in order to satisfy this test.

Facts

You take the necessary step and effect service on AV. They respond by serving a defence which simply contains an exception de fond disputing the Guernsey court's jurisdiction and arguing that Italy is the most convenient forum for the trial.

Question 2 B

What application is the advocate acting for AV most likely to make and what test would the court consider when deciding on their application?

[Total: 16 Marks]

QUESTION THREE (12 marks)

Facts

The Royal Court hears the application made by AV's advocate and after giving its decision, goes on to make directions regarding AV's service of a full defence, disclosure, exchange of witness statements and expert evidence.

With respect to expert evidence, both parties are given permission to obtain their own expert evidence.

Question 3A

What directions might the court give with respect to any differences that might arise between the experts and how these differences might be resolved?

Facts

AV have not filed its witness statements on time. It sought an extension which GDG agreed to but failed to serve them again. You obtain your client's instructions to apply for an unless order.

Question 3B

What is the procedure for seeking an unless order and what are the consequences should such an order be granted.

[Total: 12 Marks]

QUESTION FOUR (10 marks)

Facts

The Royal Court gave a direction for standard disclosure and you arrange a call with John Wilson from GDG to discuss this. During the call, you advise Mr Wilson that the advocate for AV has indicated that he would expect GDG to refer in their disclosure list to copies of all documents that it holds relating to the investigation by the vets from the States of Guernsey.

Mr Wilson indicates that he is extremely unhappy about this as the documents include quite a lot of confidential information about the farm and the manner in which it is run. He tells you that the representatives of the States of Guernsey made it clear that their investigation was to establish the cause of the death of the herd for safety reasons and would not lead to any legal action. Whilst he understands the relevance of the documents, he therefore does not see how the information could be used in these proceedings.

Question 4

What advice would you give Mr Wilson about GDG's duty of disclosure and the steps the other party could take if he did not disclose the documents they have referred to?

[Total: 10 Marks]

QUESTION FIVE (16 marks)

Facts

The reports from the experts are exchanged. You consider the report from AV's experts and see that it concludes that there were several potential reasons for the contamination of the feed. This could have happened wherever the feed was stored. The report records that the procedures in place at AV's plant in Luzzara were entirely appropriate and would most likely have ensured that no contamination occurred. It reaches a similar conclusion about the process that AV used for transporting the feed.

The report goes on to note that FSL was not a specialist storage unit and that there could have been cross contamination from goods that were stored at its premises.

Finally, the expert also casts doubt on the cleaning and storage arrangements that were in place at GDG's farm in Les Sages.

You send the report to your expert who disagrees with the conclusions reached by AV's expert. In particular, your expert sees nothing to persuade him to change his initial conclusion that the spores which caused the contamination can only have originated from the period when the feed was in the control of AV.

AV's advocate indicates that they wish to amend AV's defence in the light of their expert's conclusions. You do not agree with this given the conclusions that your expert has reached. AV therefore applies to the Royal Court to amend its defence.

Question 5A

What factors would the Royal Court consider when deciding on AV's application to amend its defence? You should only refer to those factors which are relevant to this case.

Facts

AV also wishes to add FSL as a party to the proceedings given the concerns that its expert expressed about possible cross contamination at FSL's premises.

Question 5B

What step should AV's advocate take to add FSL as a third party.

Facts

You advise John Wilson of the developments in the case. He expresses some exasperation at how long the case is taking and, in particular, is worried about the possible delay that might arise if FSL becomes involved.

Question 5C

What is the time limit for FSL to respond if they are added as a third party and what would happen if they did not respond?

[Total: 16 Marks]

QUESTION SIX (10 marks)

Facts

You should assume that FSL are added as a party to the proceedings and that the Royal Court has given further case management directions, including provision for exchange of witness statements.

In accordance with these directions, you take a statement from Michael Le Fondre who had responsibility for the storage of the feed and cleaning of the silo at GDG's farm in Les Sages. His evidence is very helpful as it supports GDG's position on the manner in which they dealt with the feed.

Unfortunately, shortly before you serve your witness statements, you receive a phone call to say that Mr Le Fondre died the previous week. You, nonetheless, still wish to rely on his evidence at the trial of the matter.

Question 6A

What steps would you take in order to be able to rely on Mr Le Fondre's evidence at trial?

Question 6B

How would the Royal Court view the evidence from Mr Le Fondre?

[Total: 10 Marks]

QUESTION SEVEN (12 marks)

Facts

The trial of the matter goes ahead before the Bailiff and three Jurats. At the conclusion of the trial the Jurats agree with the conclusions of GDG's expert that the contamination must have occurred while the feed was under the control of AV. As a result, the case is decided in GDG's favour. AV's advocate indicates to you that they will appeal against the decision on the basis that the Jurat's finding of fact on the origin of the spores was incorrect.

Question 7A

Explain the basis upon which a party can appeal against the decision of the Jurats.

Facts

Assume that AV did not appeal when AV's advocate indicated they were going to. It is two months later and you hear that AV's advocate has now received firm instructions from AV to appeal to the decision.

Question 7B

What is the time limit for appealing a matter from the Royal Court to the Court of Appeal? If leave to extend time to appeal is required, who is it made to and what is the test that will apply?

Question 7C

What is the test for leave to appeal?

[Total: 12 Marks]

QUESTION EIGHT (6 marks)

Facts

Irrespective of your answer to **Question 7** you are to assume that AV were unsuccessful in their appeal. You speak to John Wilson who is delighted by the outcome. He notes that GDG were awarded costs and asks whether that means they will be refunded everything that they have paid for your firm's fees for the Royal Court action and the appeal. He remembers you telling him about this at the beginning of the case but cannot find his note of what you told him.

Question 8A

Outline the normal bases on which costs are awarded and explain whether GDG are likely to recover all of their costs from AV.

[Total: 6 Marks]