

GUERNSEY BAR EXAMINATION

09:30AM, 15 MAY 2023

COMPULSORY PAPER ONE

BAILIWICK LAWS, CONSTITUTION, LEGISLATION AND ADMINISTRATION

THREE HOURS

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

- **QUESTION 1 – 20 MARKS**
- **QUESTION 2 – 30 MARKS**
- **QUESTION 3 – 15 MARKS**
- **QUESTION 4 – 20 MARKS**
- **QUESTION 5 – 15 MARKS**

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)**

QUESTION 1 (total 20 marks)

The UK is seeking to accede to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), which is effectively a free trade agreement. The Bailiwick has been asked if it also wishes to accede to the CPTPP as part of the UK's membership. The Guernsey Argus newspaper becomes aware of this possibility and sends its journalists, John Caramel and Ron Waffle, to visit your firm and ask you to explain:

- 1.1** how international agreements can apply to the Bailiwick,
- 1.2** the different ways in which the Bailiwick can currently enter into international agreements,
- 1.3** how these processes have evolved historically, and
- 1.4** how any rights contained in such agreements may be given domestic effect.

In order to understand how the CPTPP differs from the Bailiwick's pre-Brexit position, Messrs Caramel and Waffle would also like you to explain:

- 1.5** the main features of Protocol 3 in relation to trade.

QUESTION 2 (total 30 marks)

The Beneficial Ownership of Legal Persons (Guernsey) Law, 2017 directed the establishment and maintenance of the Register of Beneficial Owners of Legal Persons. Information as to beneficial ownership of companies incorporated in Guernsey and other relevant legal persons must be provided for entry on the Register.

Although the Register is open to inspection by the Guernsey Financial Services Commission, Revenue Service and Economic Crime Division for the purpose of the carrying out of their functions, there is no general right of public inspection.

The UK Government, by contrast, concluded that, for the purposes of the prevention of money laundering, registers of beneficial ownership should be publicly accessible. In consequence, Parliament enacted legislation in 2018 requiring the British Overseas Territories (but not the Crown Dependencies) to establish publicly accessible registers of beneficial ownership of companies registered in their territories.

In 2019 Dame Margaret Hodge MP and Andrew Mitchell MP proposed an amendment to a further Parliamentary Bill in similar terms to the provisions applying to the British Overseas Territories. The relevant part of the amendment was as follows –

“(4) An Order in Council must be made requiring the government of any Crown Dependency that has not introduced a publicly accessible register of beneficial ownership of companies within their jurisdiction to do so by 31 December 2020.

(5) An Order in Council under subsection (4) must set out the form that the register must take.”

The amendment attracted significant cross-party support; but in the event the Bill was withdrawn to enable further consultation with the CDs.

Hodge and Mitchell stated in correspondence that the good government of the CDs and the UK's national security justified the UK seeking to compel the CDs to adopt public registers if they did not do so themselves. The MPs had no doubt that "the Kilbrandon Report (1973) is definitive in that the UK has sufficient legal powers to compel" the CDs to do so; and that the British Parliament would expect the CDs to follow the example of the BOTs.

The Channel Islands responded by pointing out that the registers already established in the Islands met international standards (even though the beneficial ownership information was not publicly accessible) and that the European Data Protection

Supervisor had raised concerns in relation to the risks for individuals' rights to privacy and data protection of compulsory open registers.

An ironic footnote is that, on the 22nd November 2022, the Court of Justice of the European Union ruled that the provisions of EU law requiring information on beneficial ownership to be accessible to the general public were invalid because they infringed the right to respect for private life and to the protection of personal data established by the Charter of Fundamental Rights.

Your firm has now been approached by Deputy Chardonney Chouffleur, who is extremely concerned that Guernsey could be vulnerable to "future legislative attacks by imperialist parliamentarians who, having botched their own economy, think they have the right to do the same for us".

Explain to Deputy Chouffleur:

- 2.1 the legal and constitutional issues engaged by the 2019 events in Westminster;
- 2.2 in the context of the particular issues of that case, whether the Hodge/Mitchell interpretation of the UK's power to legislate without Guernsey's consent was correct;
- 2.3 what the Guernsey authorities (including the courts) might have done had the amendment been enacted and the Order in Council made;
- 2.4 whether there are any other constitutional issues, not involving the UK/Crown Dependency relationship, with the proposed subsection (4) set out above;
- 2.5 whether there is anything that could be done in respect of the constitutional relationship short of independence – which Deputy Chouffleur, an ardent royalist who wishes to retain the link to the Crown, does not want - that could forestall future such attacks.

QUESTION 3 (total 15 marks)

A partner in your firm has been asked to speak to the Guernsey Institute of Legal Attorneys about the Guernsey Court of Appeal. As she specialises in non-litigious work, she asks you to prepare an *aide memoire* setting out:

- 3.1 the origin of the Court of Appeal (including any previous initiatives to establish a court to hear appeals from the Royal Court),
- 3.2 the composition of the Court of Appeal and who may appear before it,
- 3.3 the civil jurisdiction of the Court of Appeal, including its powers and whether it is bound by its own decisions, and
- 3.4 the criminal jurisdiction of the Court of Appeal, including its powers and the basis on which it can allow or dismiss an appeal.

QUESTION 4 (total 20 marks)

- 4.1 Name four publications, works or other documents that record or assist with establishing the customary law of Guernsey. In each case provide a brief description of the particular aspect or aspects of the customary law that the publication etc. deals with.
- 4.2 Of all the different sources of Guernsey customary law which, in your view, is the most important for the purposes of contemporary practice in Guernsey and why?
- 4.3 Explain and discuss critically the decision in *Morton v. Paint* [1996] 21 GLJ 61. Your answer should include consideration of the subsequent application of that decision.

QUESTION 5 (total 15 marks)

Deputy de Minimis believes that it must be possible to make a sizeable reduction to the forecast deficits in States' finances by cutting the size of Guernsey's government and changing the way it operates. He comes to your office to seek your advice. "Guernsey is small. Its current government is just far too big for its size", he says, at the start of your meeting with him. He goes on to say that in his view there should be no more than 30 Deputies and 8 committees.

Against that background Deputy de Minimis asks you the following questions:

- 5.1** How have the States of Deliberation changed since their establishment? Deputy de Minimis is particularly interested to know about changes that have occurred since the year 2000.
- 5.2** What legislative changes would need to be made in order to give effect to the down-sizing that Deputy de Minimis has mentioned to you? Describe any constitutional, legal or practical issues that seem to you to arise in connection with his proposal.
- 5.3** How, and by whom, can policy proposals (such as any proposals that Deputy de Minimis may have in mind) be submitted to the States of Deliberation for debate and action?

Please provide responses to the matters raised by Deputy de Minimis.