

GUERNSEY BAR EXAMINATION

9.30AM, 11 MAY 2020

COMPULSORY PAPER ONE

BAILIWICK LAWS, CONSTITUTION AND ADMINISTRATION

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 - 12 MARKS**
- **QUESTION 3 - 15 MARKS**
- **QUESTION 4 - 10 MARKS**
- **QUESTION 5 - 12 MARKS**
- **QUESTION 6 - 16 MARKS**
- **QUESTION 7 - 10 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 25 marks)

Abigail Le Lievre is delighted to have been elected to the office of Jurat of the Royal Court of Guernsey. She is in the precinct of the Royal Court, waiting to be sworn into office at a sitting of the Full Court. You are standing beside her (Covid-19 emergency regulations now having expired) as you are an Advocate of a private firm appearing at the Full Court on another matter.

- 1.1 Abigail notices what looks like a 'Royal Charter' on the wall going towards Court. She asks you to explain what the Royal Charters are, providing a few examples, and their relevance, if any, to Guernsey today.
- 1.2 Abigail thanks you and says she is particularly interested in history and how the role of Jurat in Guernsey has evolved into what it is today. She wonders if you could explain this briefly to her, not forgetting to mention any reforms and relevant legislation affecting Jurats' roles and how the Jurats are elected?
- 1.3 Abigail's background is in health and community service, and she says this is one of the first times she has come to court, other than to buy her house, many years ago. She confesses she is still a little confused about the court structure on Guernsey. Could you please briefly tell her about the Full Court, including its jurisdictions (mentioning any matters for which you or your Advocate colleagues might be appearing) and any additional functions?
- 1.4 Abigail is interested to learn that there are actually 5 divisions of the Royal Court, one of which is the Full Court. Without mentioning the Full Court again, she wonders if you could remind her about the other 4 divisions, particularly their legislative underpinning and functions?
- 1.5 Abigail notices two people hurriedly walking past who 'look official'. You identify them as the Law Officers of the Crown, HM Procureur & HM Comptroller. Briefly explain to Abigail, what you understand to be the main role of the Law Officers and include in your answer what you consider are the two most important functions of HM Procureur and the two most important functions of HM Comptroller.

(25 marks)

QUESTION 2 (total 12 marks)

‘The Parishes are completely overshadowed by the States of Guernsey and have no role in the Island’s efficient functioning.’

Discuss this statement, considering in particular:

- 2.1 the functions and responsibilities of the Constables and the Douzaines,
- 2.2 their manner of election and appointment, and
- 2.3 the Douzaines’ powers of taxation (including matters for which they can levy taxes).

QUESTION 3 (total 15 marks)

In January 2020, the UK finally left the European Union as a result of the June 2016 Referendum.

- 3.1 While the transition period is in force, what is the Bailiwick's relationship with the European Union?
- 3.2 At the end of the transition period, how will the Bailiwick's relationship with the UK differ from that existing pre-Brexit?
- 3.3 What is 'Preserved EU Law' and how will it have effect after the end of the transition period?
- 3.4 The Policy & Resources Committee wishes to:
 - a) amend one provision of preserved EU law, and
 - b) implement a new EU Regulation relating to financial services.What legislative options are available to effect these changes?
- 3.5 On the basis that there is no future partnership agreement (resulting in a "no-deal" scenario) between the UK and the European Union at the end of the transition period, how would this affect the Bailiwick in terms of (a) financial services, (b) immigration and (c) trade in goods?

QUESTION 4 (total 10 marks)

‘Only the Chief Pleas of Sark and the Court of the Seneschal should be able to make decisions affecting Sark.’

- 4.1 Explain the powers of the Chief Pleas to enact legislation and any power of any other body to enact legislation for, or annul legislation from, Sark.
- 4.2 Set out the jurisdiction of the Court of the Seneschal and the original jurisdiction of any other courts in relation to acts or omissions (civil or criminal) in Sark.

QUESTION 5 (total 12 marks)

The Bar Council wishes to update its website on the sources of Guernsey law and you have been asked to prepare the page on customary law, including both the 'ancient customary law' and 'the evolving body of case law' (as described in *A v. R* [2018] UKPC 4). Using any relevant legislation or jurisprudence:

- 5.1 explain the development of the customary law in Guernsey and set out how it may be altered, and
- 5.2 explain how courts have both encouraged and limited themselves to develop the law in Guernsey in areas for which legislation has not been enacted.

Your page should also refer to three of the major commentators on the customary law and explain the significance of their work.

QUESTION 6 (total 16 marks)

‘The British Government cannot have it both ways. They cannot on the one hand argue that they are powerless in relation to our overseas territories and Crown dependencies, and on the other promote a particular view of those territories’ interests—which, as I have said, I do not think are their long-term interests—to other actors such as the EU. Those positions are just not compatible.’

The above statement was made by Anneleise Dodds MP, during a debate in the House of Commons on legislative proposals which would have forced Guernsey to adopt a public register of beneficial interests in companies.

By reference to the Kilbrandon Report, Reports of the Justice Select Committee and other subsequent published views:

- 6.1 explain the basis on which the UK claims to have power to legislate for the Bailiwick of Guernsey,
- 6.2 describe the development of Guernsey's international identity and how the UK represents (and is required to represent) its interests in international affairs, and
- 6.3 describe how and on what basis UK legislation might purportedly be applied to Guernsey against its wishes.

QUESTION 7 (total 10 marks)

In the recent *Investec* case (2018), the Privy Council on appeal from Guernsey decided a point of Jersey trust law, stating that both Islands had imported English law principles.

7.1 To what extent does this decision have any precedent value in Guernsey?

END OF PAPER