

GUERNSEY BAR EXAMINATION

9.30 AM, 18 MAY 2022

CRIMINAL PRACTICE AND PROCEDURE

THREE HOURS

CANDIDATES ARE REQUIRED TO ANSWER ALL QUESTIONS

THE MARKS AVAILABLE FOR EACH QUESTION ARE SHOWN BELOW. ALL QUESTIONS CARRY EQUAL MARKS.

- **QUESTION 1 – 25 MARKS**
- **QUESTION 2 – 25 MARKS**
- **QUESTION 3 – 25 MARKS**
- **QUESTION 4 – 25 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 QUESTION (if applicable)**

MATERIALS PROVIDED:

1. **The Criminal Justice (Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2002, as amended**
2. **The Magistrate's Court (Defence Witnesses) Rules 1983**
3. **The Criminal Justice (Fraud Investigation) (Bailiwick of Guernsey) Law, 1991, as amended**
4. **The Criminal Justice (International Cooperation) (Bailiwick of Guernsey) Law, 2001, as amended**
5. **The Disclosure (Bailiwick of Guernsey) Law, 2007, as amended**
6. **The Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003, as amended**

7. **Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law – Extract Codes C and D**
8. **Regulation of Investigatory Powers Law (Bailiwick of Guernsey) Law, 2003, as amended**
9. **The Children (Guernsey and Alderney Law) 2008, as amended**
10. **Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law 1999, as amended**
11. **The Drug Trafficking (Bailiwick of Guernsey) Law 2000, as amended**
12. **Richards v Law Officers of the Crown, 2000-02 GLR 247**

QUESTION 1 (total 25 marks)

Please note that the facts are set out in four parts with questions asked after each section, so you are advised to read the question in full before commencing your answer.

FACTS: PART ONE

Samantha Galbarn is a British citizen living in Dorset. She decides to hire a camper van for a week to take her two children to visit Guernsey and then go on a driving tour of Brittany.

On 5 July 2021 Samantha goes to Mike's Motors Ltd. It has an office in Poole, Dorset. She collects a VW camper van registration 'SUN12' and then drives off to the ferry. Arriving at the ferry terminal in St Peter Port at 1700 on 5 July 2021, Samantha drives the van off the ferry and is stopped by Customs. They have received information about a van from Mike's Motors Limited being used for smuggling.

A search of the interior of the VW camper van reveals nothing untoward. It is only when examining underneath the van, that the Customs officers discover a stash of suspected drugs sealed into one of the wheel arches behind an expertly welded panel. Later analysis identifies this to be 13 kilograms of cannabis and 100 grams of cocaine.

Samantha is arrested on suspicion of being knowingly concerned in the importation of cocaine and cannabis. Her children are taken into temporary emergency care.

The investigating officer seizes Samantha's mobile phone. The phone has a password and is locked. During an initial interview the officer asks her for the passcode so that he can access the phone's contents.

- 1.1** You are called to the station to advise Samantha. She pauses the interview to speak to you privately and asks if she has to provide the passcode to her phone? She also asks what steps Customs may take if she does refuse to hand it over. Advise her. **[4 marks]**

FACTS: PART TWO

The interview concludes and you leave. Samantha Galbarn is returned to her cell. She is held for a further six hours without being offered any refreshments. She keeps asking about her children and is clearly getting distressed.

Eventually the Custody Sergeant contacts you and allows you to speak to her. Samantha asks you how long she has to stay there and whether she can speak to her children.

- 1.2** Advise Samantha how long she can initially be held in custody without the investigators having to make an application to court for an extension and whether she has any right to speak to her children. **[3 marks]**

FACTS: PART THREE

You then speak to the investigating officers who say they will only be ready to interview her again the following morning. Unbeknown to you, they then go and speak to Samantha in her cell. They tell her they can hold her for as long as they like in Guernsey without charge, and say that if she just agrees to be interviewed without you, she will get out much quicker. As a direct result of what the investigating officer says, Samantha Galbarn then agrees to be interviewed without you and confesses. She tells the police that she acquired the van a fortnight ago and did it up herself so she could hide the drugs.

- 1.3** Samantha is then charged. Samantha tells you about what was said to her before she confessed in interview. Explain to her how you might challenge the admissibility of her confession, covering the full procedure that is likely to take place, what test the court will apply and advise her whether your challenge to the admission of the confession is likely to be successful. **[13 marks]**

FACTS: PART FOUR

The police check their records. They discover that Samantha Galbarn was arrested in 2019 for shoplifting on her last trip to Guernsey. She was never charged. The prosecution provide the committal papers to you and it contains the following counts:

- (a) Theft from a shop contrary to section 7 of the Theft (Bailiwick of Guernsey) Law 1983. The theft took place on 1 July 2019;
- (b) Being knowingly concerned on 5 July 2021 in the fraudulent evasion of the prohibition on importation of cannabis a Class B controlled drug, in contravention of the prohibition on importation imposed by section 2(1)(a) of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974;
- (c) As above in relation to cocaine, a Class A drug;
- (d) Failing to provide her passcode contrary to the Regulation of Investigatory Powers Law (the RIPL offence).

Samantha reads the committal papers you have provided to her and asks the question below. Advise her, giving full reasons for your advice.

1.4 Are the prosecution entitled to join all these matters on the same indictment?

[5 marks]

QUESTION 2 (total 25 marks)

Please note that the facts are set out in two parts with questions asked after each section, so you are advised to read the question in full before commencing your answer.

FACTS: PART ONE

You continue to act for Samantha Galbarn.

Regardless of your previous advice you are now to concentrate upon the two counts of importation. Assume the confession she has made was excluded by the Court.

The time has now come to deal with prosecution disclosure.

The GMG6C list of unused material is provided by the prosecutor and it contains the following entries each of which is marked as “not-disclosable” by the reviewing prosecutor.

- (a) A registered keeper document generated by a search carried out by the Guernsey Police. It shows that Mike’s Motors Ltd was the registered keeper of the VW Van ‘SUN12’. The document shows that Mike’s Motors Ltd became the registered keeper of the vehicle two weeks before Samantha hired it [document A].
- (b) A company search showing that Michael P Evans is the sole director of Mike’s Motors Ltd of Poole [document B].
- (c) A copy of a webpage from the Mike’s Motors Ltd website showing the VW Van ‘SUN12’ and the following text:

“Just acquired, a classic VW camper van. When we got it, this van had seen better days. ‘SUN12’ has been the subject of a complete restoration by us. It will be available for hire from 5 July 2021.” [document C].
- (d) Information drawn from the English police national computer showing that Michael P Evans has two previous convictions for possession of cannabis with intent to supply to others [document D].

2.1 What test should the prosecutor apply in deciding whether or not to give disclosure of this material? Apply the test to each of the documents A to D explaining your answer by reference to the applicable Guernsey case law.

[13 marks]

FACTS: PART TWO

Samantha is convicted of the two importation counts (13kg of cannabis resin and 100 grams of cocaine) and the RIPL offence. Samantha has no previous convictions.

- 2.2** Advise Samantha what the relevant considerations will be for the sentencing court and what range of sentence Samantha faces for each offence. **[9 marks]**
- 2.3** Samantha is shocked by the likely sentence she might receive. Explain to her what policy reasons the Court of Appeal identified in the 2021 decision in *Barras Watt and Orchard* to justify retaining the existing sentencing tariff for drugs. **[3 marks]**

QUESTION 3 (total 25 marks)

Freddy Jupiter is 14 years old and he has been arrested in Alderney on suspicion of robbing the local newsagent. Fortunately, you are in Alderney and agree to attend to represent him. The Alderney Sergeant explains that he has been to view CCTV from the shop and saw your client “as *clear as day*” when he threatened the shopkeeper with a baseball bat and stole 3 bottles of beer. He explains that this happened 14 days ago and he had been waiting for a specialist to travel over from Guernsey to recover the CCTV. He explains that the shopkeeper told him the CCTV was kept for 7 days but when the specialist went to the shop earlier that day it had already been overwritten and has been permanently lost.

The shopkeeper provided a statement identifying your client but said he was only 60% sure it was him and, sadly, he has since died (you can assume this death was unconnected with the incident).

An eyewitness (witness A) saw a person running down the road, about 50 metres from the shop, but his view was obscured by a car, and he only saw the suspect for a few seconds before he disappeared down a side road. He thinks he might be able to recognise your client again and the officer indicates he wants to proceed to an ID procedure.

When you speak to your client, he says he hates the police in Alderney and is telling them nothing and will not co-operate at all with the investigation. You can assume a suitable Appropriate Adult is arranged by the police.

3.1 Advise your client of the possible identification procedures available to the police and any consequences if he refuses to agree to an identification procedure.

[5 marks]

3.2 Your client is identified by the witness, and the police officer indicates that he has complied with The Children (Guernsey and Alderney Law) 2008, as amended and your client is going to be charged and bailed to Guernsey. Advise your client what procedure the officer is required to follow (given your client is 14 years old) and whether he can make his first appearance in a Guernsey court. **[4 marks]**

3.3 He appears in court in Guernsey. Explain which courts it will progress through on the way to trial and at what stage and in what court Freddie will be able to enter his plea. **[3 marks]**

3.4 Your client goes to trial and the prosecutor wants to call the Alderney Sergeant to give evidence about what was on the overwritten CCTV. Advise your client whether there is anything you can do to challenge this, and whether you can make any abuse of process application about the lost CCTV. **[5 marks]**

- 3.5** The prosecution also say they are going to seek to rely on the witness statement of the deceased shopkeeper. Explain how they might seek to admit this evidence by reference to the relevant legislation citing the approach the court will take to admissibility. **[5 marks]**
- 3.6** Your client says his witness, a Brian February, will not attend court. Explain what steps you could take to overcome this issue. **[3 marks]**

QUESTION 4 [total 25 marks]

A Guernsey bank (GBL) has approached you for advice regarding a customer, Roger X, whom it believes invests in businesses around the world that produce cannabis for recreational use. GBL knows that the recreational use of cannabis is illegal in Guernsey and is therefore concerned that it might be committing a money laundering offence if it accepts payments derived from the production of cannabis.

4.1 What do you advise GBL about Guernsey's money laundering offences (including by reference to any applicable legislation or other documents)?

[9 marks]

GBL tells you that they have seen media reports linking the brother of Roger X to fraud and drug dealing. They ask your advice about any steps that they should take as a result and any exposure they may have to liability.

4.2 What do you advise GBL?

[3 marks]

GBL is also concerned that if there is a criminal investigation into the activities of Roger X or his brother, this might result in GBL having to provide information to the authorities. They therefore want to know what powers the authorities have to compel GBL to provide information.

4.3 What do you advise GBL?

[5 marks]

An investigation takes place and Roger X is prosecuted for fraud in the Royal Court. During the course of the trial the Guernsey authorities realise that they need evidence about the activities of Roger X and his brother from another country. Roger X also believes that there is information held abroad that would prove his innocence.

4.4 Describe the process that enables both parties to obtain this evidence, including the relevant Guernsey legislation and the applicable legal mechanisms.

[3 marks]

Roger X is convicted, and the authorities wish to confiscate the money in his name held at GBL.

4.5 Describe the process for doing this.

[5 marks]

END OF PAPER