

GUERNSEY BAR EXAMINATION

09:30AM, WEDNESDAY 14 May 2025

PAPER TWO

CRIMINAL PRACTICE AND PROCEDURE

THREE HOURS

CANDIDATES ARE REQUIRED TO ANSWER ALL QUESTIONS

THE MARKS AVAILABLE FOR EACH QUESTION ARE SHOWN BELOW

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 QUESTIONS (if applicable)**

Question 1 (25 marks)

Facts – Part One

You act for A, a 30 year old male, who is a keen Guernsey FC fan who has lived in Guernsey all his life. He has been out drinking all day after going to watch the Muratti wearing his favourite Guernsey FC football shirt. He has been arrested on suspicion of drink driving and you attend to advise him at Guernsey Police HQ. The following information is given in a written advance disclosure by the investigating officer.

Disclosure

“At 0300 the police watching CCTV spotted a male walking to a car parked at North Beach. The male appeared to be stumbling, and he was then seen to get into a Mini Cooper vehicle and proceeded to drive off in the direction of the Val Des Terres. The number plate could not be seen by the viewing officer due to heavy rain and poor visibility. Officers were dispatched to trace the vehicle.

At 0310 the police received a report that a Mini Cooper had crashed at the roundabout at the top of the Val Des Terres. Officers attended the vehicle at 0315 and found it empty but badly damaged, with the air bag deployed. They noted the registration number as 1234 and then checked with the control room to identify the registered keeper who is your client, and the officers then attended at his address which is nearby. When officers knocked on the door your client answered dressed in his dressing gown, but officers could see him wearing a Guernsey FC shirt underneath. Officers asked your client if he had been the driver of Mini Cooper 1234 and he said not. It was apparent to officers he had been drinking, and so he was then cautioned, and arrested on suspicion of driving whilst over the prescribed limit contrary to section 1 of the Drink Drive (Guernsey) Law, 1989.

A statement has been obtained from witness X, the person who had seen Mini Cooper 1234 crash into a stationary unoccupied car, and he said he had then seen the driver quickly run away. The description given is of a person aged about 30, 5 feet 10, wearing a Guernsey FC top, and blue jeans. They saw the driver from about 15 feet whilst sat in their car and saw them for about 10 seconds with no obstructions.

Your client has blown 110 micrograms on the breathalyser at the police station, and you attend for interview after your client has been on a rest period and with the police doctor having said your client is fit for interview.

During a search of the vehicle officers found a mobile phone in the footwell”.

Question 1 (a)

A instructs you he is innocent and that he seeks your advice on the following:

- i. The strength of evidence against him;**
- ii. Whether he should offer to agree to identification procedures, and what they may be.**

Advise him.

(8 marks)

Facts – Part Two

Irrespective of your advice your client answers no comment in interview. To your surprise he is not charged but is released on bail by the police to attend an identification procedure which, irrespective of the advice you gave in answer to question 1(a), your client decides to co-operate with. Your client is then picked out by witness X. Your client no comments a further police interview. Your client is then charged with drink driving. The police then reveal he has two previous convictions for the same offence, one 5 years ago and the other 10 years ago. The Custody Sergeant indicates he is going to remand your client in custody to appear at court, explaining he thinks your client is *“too much of a liability to be allowed out on bail.”*

Question 1 (b)

By reference to the relevant legislation explain:

- i. What representations you would make to the Custody Sergeant to try and challenge the decision to remand your client in custody and what will happen next if those representations are unsuccessful?**
- ii. Which courts the case could be heard in?**
- iii. What sentence he might face if convicted?**

(6 mark)

Facts – Part Three

Your client decides to plead not guilty. When the prosecution discloses the case to you, you note that there is no record on file of witness X's first description of the person they saw run away. When you ask the police, they say it does not appear this was recorded when the officer spoke to him initially. Your client asks if this matters, and whether he can challenge the admissibility of the identification evidence. He also says one of his friends recently "got off" driving because he was able to show he had been drinking after driving but before the police arrested him. He asks how this might have happened. Ahead of the hearing you also receive a statement from the witness X in which he explains he suffers from severe anxiety about public speaking and is also fearful of repercussions if your client sees him. He has asked for a screen to be in place when he gives evidence.

Question 1 (c)

Advise A:

- i. How might you challenge the admissibility of the identification evidence and whether it will be successful?**
- ii. The relevance of post driving consumption of alcohol to offences involving drink driving?**
- iii. What will happen about witness X's request for a screen and whether you can object to this?**

(8 marks)

Facts – Part Four

Your client is convicted of drink driving. The prosecution indicate they intend to seek compensation for the damage your client caused to the other vehicle, and that they will seek forfeiture of your client's mobile phone.

Question 1 (d)

Advise A:

- i. As to whether the law permits the court to order compensation following his conviction.**
- ii. About the prosecutor's indication they will seek to forfeit his phone.**

(3 marks)

Question 2 (25 marks)

Facts – Part One

You are the Duty Advocate on call over-night. You receive a call from the police station at 2330, to advise you four suspects have been detained, all on suspicion of importing class A drugs into Guernsey. They have all asked for legal advice.

Question 2 (a)

Before knowing anything else about the allegation, what should you consider when deciding if you can act for each of the suspects?

(2 marks)

Facts – Part Two

You arrive at the police station at 0030 hours, having decided you will act for two of the suspects A and B (you have called in another on-call Advocate to represent the other two). Before you meet your clients, you are invited to view the custody records. You note A is a pregnant female who, on booking in, reported some stomach pains. B is a male who has declared he is addicted to class A drugs.

Question 2 (b)

Which code and paragraph of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003, governs the requirement of the police to provide medical attention, whose responsibility is it to ensure compliance with the law, and when does the requirement to provide medical attention arise?

(3 marks)

Facts – Part Three

A is taken to hospital and you are advised she will be questioned later. B is examined by the Forensic Medical Examiner and is deemed fit to detain. No further welfare needs are identified, and the investigating officers are ready to interview. You are given verbal disclosure from the investigating officers before meeting with B. Once you are in a private consultation room, the first thing B tells you is that the interviewing officer had told him it would “all be so much quicker if we got on without an advocate.”

Question 2 (c)

By reference to the applicable code and paragraph(s) of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003, explain whether the investigating officer is correct in saying it ‘would be quicker without an advocate’?

(2 marks)

Facts – Part Four

You are very upset at the actions of the investigating officers and, once all parties are in the interview room, you confront the officers and argue with them, and the officers say they are not prepared to have you present in the interview.

Question 2 (d)

Under what circumstances, with reference to the relevant code and paragraph(s) of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003, can an advocate be removed from an interview?

(2 marks)

Facts - Part Five

After the officers have consulted with another officer, you are allowed to remain and the interview proceeds. In private consultation before the interview, B had told you that he had hidden a large amount of cocaine inside the spare wheel of the car he had then driven onto the ferry. He had a contact he was to meet once he arrived in Guernsey and, in return, his own drug debt would be wiped out. He also told you that A knew all about the drugs being in the car and that she had helped load them into the wheel. B said A had helped out because she wanted him to be free of the debt so they could start over with their new baby. A remains in hospital, and you have not spoken to her.

Question 2 (e)

With reference to the Code C guidance at paragraph 6C, explain the advocate's role at the police station and explain your advice to B as to what he should do in interview in respect of whether or not to answer questions?

(5 marks)

Facts – Part Six

A and B are both charged with importation of class A drugs. Assume you are professionally able to act for A and B going forward.

Question 2 (f)

Briefly explain the process by which the case progresses from charge to being before the Royal Court.

(3 marks)

Facts – Part Seven

A and B both plead guilty at the earliest opportunity at the Royal Court to importing 300g of cocaine. Matters are adjourned for sentence, to allow a pre-sentence report to be prepared. By the date of sentence, A has given birth to the couple's baby.

Question 2 (g)

What advice will you give to A and B before the sentencing hearing, both in terms of preparing for it and what will happen at the hearing itself, with reference to:

- i. The maximum sentence available for the offence and the range of sentences your clients face applying the relevant case law.**
- ii. A summary of the mitigating/aggravating features the court will take into account (including the impact of sentence on family)?**
- iii. How the Royal Court is composed for sentence?**

(4 marks)

Facts – Part Eight

C and D were released without charge, but you have been advised they have now been charged after they have returned to the Island. The case proceeds to the Royal Court. D pleaded guilty to the offence at the earliest opportunity but C contested the matter and was convicted after trial. C and D are both men of a similar age and background and both were to gain a similar financial advantage from the importation of the class A drugs. They both have previous for drug importation offences having offended before and received similar sentences. They are sentenced together with C receiving 16 years and D 8 years. Your client C is upset that D got a much lower sentence than him and feels it is unfair even taking into account his guilty plea.

Question 2 (h)

Assuming you are professionally able to act for them both, and by reference to relevant case law, advise C on what basis you would seek to appeal the sentence imposed?

(4 marks)

Question 3 (25 marks)

Part A

Facts - Part One

Mr and Mrs E have been married for 10 years. They have 3 young children and all live together. Over the years, there have been several occasions when the police have been called to attend the house due to loud arguments raising concerns for their neighbours. Both parties have, on occasion, been identified as the aggressor but no action beyond words of advice has ever been taken. No statements were ever taken, and the information is contained only in police reports.

On Saturday evening, the neighbour, G, from the house next door heard raised voices from both Mr and Mrs E. G opened her window so she could hear better what was going on and heard a voice she recognised as Mrs E shout: "ouch, you just split my lip!" The police advise that this is captured on a 999 call that Mrs E made to the police at the time. Further, G also called 999 and there is a recording of this call, and both calls are provided to you. G has also given a statement about what she heard.

The police attended 5 minutes after G made her call. Mr and Mrs E did not want to admit officers into the house, both saying nothing had happened. The officers observed a small cut to Mrs E's lip and could hear children crying inside. Mr E was arrested on suspicion of assault and removed to the police station. Mrs E agreed she would speak to officers but that she did not want to make a witness statement. She told the officer there had been a row and that Mr E had hit her, causing the injury to her face. The conversation was captured on the officer's body worn camera. Officers have given statements about seeing the cut to Mrs E's lip which was also photographed and is visible on the body worn camera. All this evidence is disclosed to you.

Mr E is charged with assault after giving a no comment interview and pleads not guilty at the Magistrate's Court. Mrs E has told the police she is not going to give a statement at any stage, will not attend court, and that she wants him home as she needs his help with the children. When you see him again just before trial, he tells you that he did, in fact, have a physical confrontation with Mrs E but he denied causing the injury to her lip. He said she had come at him, and he had reacted to push her back which had caused her to fall over. He said when she got up, she hit herself, causing the injury, and she had then called the police and shouted the words which G reported hearing. The trial is approaching. The prosecution have said they will call G and the attending police officer, who recorded Mrs E's account on body worn video, to give evidence, and that they intend to play this video to the court. They have said they also intend to play both calls to the police from Mrs E and G.

Question 3 (a)

By analysing the admissibility and weight of each piece of evidence write a letter to the prosecution challenging the decision to prosecute by reference to the Decision to Prosecute Code of Guidance and the Supplemental Code applicable

to Domestic Violence issued by the Law Officers. Your answer must particularly address whether the body worn video is admissible and set out to the prosecution any challenge you might make to this at trial?

(12 marks)

Facts - Part Two

Notwithstanding your representations the case proceeds and Mr E is adamant he wants Mrs E to attend to give evidence on his behalf.

Question 3 (b)

What, if anything, can he do to compel her to attend?

(2 marks)

Facts - Part Three

Mr E maintains his plea of not guilty and there is a trial. Mr E is acquitted in the Magistrate's Court. As you are leaving court, the Prosecutor advises you of the intention to appeal the verdict.

Question 3 (c)

Explain to your client the Prosecution's power to appeal an acquittal from the Magistrate's Court to the Royal Court, and of any steps before the appeal can progress to the Royal Court?

(2 marks)

Part B

Facts - Part One

Your client, H, is 12 years of age. He has been arrested on suspicion of burglary after being found inside a hotel room and having consumed the contents of the mini bar. H is well known to the police as he is commonly found in Town late at night after being reported missing. He has previously been referred to the Children's Convenor because the police felt there was a need for compulsory intervention, but he has never faced criminal proceedings before. He is very upset when you meet him, telling you he is "only a child". You advise him he is over the age of criminal responsibility.

Question 3 (d)

Describe the process taken for consideration as to whether to prosecute a juvenile. Please explain to your client who the 'designated officer', the Children's Convenor and HM Procureur are and what factors are taken into consideration before making a 'joint referral'.

(4 marks)

Facts - Part Two

H is eventually charged with burglary. He appears before the Juvenile Court, having been kept overnight in police detention, where you represent him. The prosecutor advises you she is seeking “detention” of H, given his history of absconding from his home.

Question 3 (e)

Advice H:

- i. What are the three ways he can be remanded in custody?**
- ii. How does his history of absconding affect what decision might be taken?**
- iii. How long can the court remand him for before further authorisation is required?**

(5 marks)

Question 4 (25 marks)

Facts - Part One

Beancounters Ltd, a local firm of accountants, acts as the auditor for a Guernsey charity, GiveCo. The aim of the charity is to promote animal welfare. Dave Dodgy, the founder of GiveCo, has previously been prosecuted for fraud but was acquitted. A trainee at Beancounters Ltd, Chloe Clever, has noted in the accounts of GiveCo that GiveCo has received a number of anonymous donations in the last couple of years, totalling nearly £200,000, which are much higher than the usual level of donations received by GiveCo. Chloe Clever has also noticed that in the same period GiveCo made several cash payments to Dave's daughter Daisy while she was away at university in the UK, for what were described as "general administrative services". Chloe Clever is curious about this, and also about several payments that have been made by GiveCo to SMASHEM, an animal rights group in France which is known for its militant approach.

Chloe Clever mentions these various payments to her boss, Eddie Easy, who plays golf with Dave Dodgy and is also the person who has always signed off GiveCo's accounts. Eddie Easy tells her he knows the family well and everything is fine.

Question 4 (a)

Identify the possible criminal offences disclosed by these facts.

(5 marks)

Facts - Part Two

Chloe Clever was not satisfied by what Eddie Easy said, and told Beancounters Ltd's money laundering reporting officer, Fiona Fussy, about the payments. Fiona Fussy wants your advice as she has not been in her post for very long. She is not sure if she should discuss this with Eddie Easy or somebody else, and she is worried that this could expose her to legal action.

Question 4 (b)

What do you advise Fiona Fussy?

(5 marks)

Facts - Part Three

As a result of action taken by Fiona Fussy, a criminal investigation is now being carried out in relation to the payments made by GiveCo to Daisy Dodgy. It is believed that both GiveCo and Beancounters Ltd may hold documents or other information relating to these payments.

Question 4 (c)

What legal powers are available to the authorities to obtain this information?

(3 marks)

Question 4 (d)

Would your answer be different if the investigation related to the payments to SMASHEM?

(2 marks)

Facts - Part Four

During the criminal investigation, it becomes apparent that there is a related investigation being carried out in the UK in relation to suspected drug dealing by Daisy Dodgy. The UK authorities wish to obtain records and witness evidence from the Guernsey bank where she has an account.

Question 4 (e)

Describe the process for requesting and providing this information.

(5 marks)

Facts - Part Five

The Guernsey authorities have concluded that although the circumstances surrounding GiveCo are very suspicious, there is insufficient evidence to charge anybody with a criminal offence. However, they are aware that 6 months ago Dave Dodgy gave Eddie Easy a watch believed to be worth about £20,000 which they believe may be linked to criminality.

Question 4 (f)

What steps, if any, can the authorities take to recover the watch?

(5 marks)