

GUERNSEY BAR EXAMINATION

9.30 AM, 22 MAY 2019

PAPER TWO

CRIMINAL PRACTICE AND PROCEDURE

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 - 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 (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999, as amended**
2. **The Drug Trafficking (Bailiwick of Guernsey) Law, 2000, as amended**
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**

QUESTION 1 (total 25 marks)

Steven (aged 17) and Janina (24) are arrested and charged with a serious assault on a man, Christian, in Le Pollet, late one Saturday night. Steven is detained in custody and produced in the Magistrate's Court on Monday morning. The prosecution object to Steven's release because he is already on bail for an unrelated assault, allegedly committed a few months earlier. Despite the objections, the Magistrate decides to release Steven on bail.

1.1 How and when might the prosecution seek to challenge that decision?

(6 marks)

Subsequently, Steven and Janina are tried and convicted in the Royal Court for the attack on Christian. The evidence showed that a single punch had been thrown by Steven which put Christian onto the ground unconscious; thereafter Janina kicked him several times on the legs whilst he lay on the ground. In the meantime, Steven was acquitted of the unrelated assault, following a separate trial.

1.2 Describe the sentencing process in the Royal Court.

(4 marks)

1.3 When the Royal Court is determining the sentences, what role if any should guidelines issued by the Sentencing Council of England and Wales play in its deliberation?

(3 marks)

Christian has been told by doctors that he has permanently lost sight in one eye and is at risk of developing epilepsy in consequence of the injuries he sustained in the assault. His injuries have had a devastating effect on his career prospects, in particular, he was training to be a commercial aircraft pilot before the assault but is no longer eligible to gain a commercial pilot's licence. He complains that he now fears going out at night time, and has become something of a recluse.

1.4 What can the prosecution do to present this information to the Royal Court?

(3 marks)

Finally, Steven and Janina are sentenced. Janina is a single parent and cares for her two children, one of whom has a serious health condition that needs constant supervision and frequent hospital treatment. Janina's family are all in Latvia and are not able to help her. Janina has three previous convictions for minor offences of violence, one in Latvia and the two most recent in Guernsey.

1.5 How are these facts relevant to the Court's decision on her sentence, if at all?

(5 marks)

Janina is eventually given a suspended sentence of three months' imprisonment. Steven, now aged 18, is sentenced to one year's immediate youth detention.

1.6 Are there any grounds on which Steven might appeal against his sentence?
(4 marks)

QUESTION 2 (total 25 marks)

- 2.1 When shall the Court of Appeal allow an appeal against conviction? In what circumstances might a meritorious ground of appeal be disregarded and the conviction upheld? **(5 marks)**

Tom is a defendant who was tried in the Royal Court on alternative counts of (1) wounding with intent to cause grievous bodily harm and, (2) unlawful wounding. On 1 October 2018, Tom was acquitted of count (1) by a majority of the Jurats sitting (8:1) but convicted on count (2) (by 5:4). Following an adjournment for a social enquiry report to be prepared, Tom was sentenced to twenty-two months' imprisonment on 10 October 2018. On 1 April 2019, Tom submitted a handwritten Notice of Appeal against his conviction on count 2. You are asked to represent Tom in the Court of Appeal proceedings.

- 2.2 Is Tom within the time limit, if any, for applying for leave to appeal against a conviction? If not, is that fatal to his chances of getting leave to appeal? **(5 marks)**

- 2.3 The Advocate who represented Tom at his trial was funded by legal aid. Tom has stated in his notice of appeal that he was never advised on whether he could or should appeal against his conviction. Is that relevant to the decision that the Court has to make now? Who will make the decision on whether or not to grant leave? **(5 marks)**

Tom asserts in his Notice of Appeal that:

- (i) the Jurats' verdict of guilty was a decision that cannot be supported by the evidence;
- (ii) the verdict being by a simple majority was invalid; and
- (iii) he wishes to adduce the evidence of Jimmy, who claims to have seen the whole incident but who was not called as a witness at Tom's trial.

- 2.4 What is the approach of the Court of Appeal to appeals against conviction based upon evidential grounds? **(4 marks)**

- 2.5 Does the fact that the guilty verdict was by a simple majority invalidate it? **(1 mark)**

- 2.6 According to what criteria will the Court determine whether or not to receive Jimmy's evidence? **(5 marks)**

QUESTION 3 (total 25 marks)

- 3.1 Guernsey has no terrorist problem so the Laws on terrorism are irrelevant and can safely be disregarded. True or False? Discuss, with reasons.

(6 marks)

Jef appears before the Court of Alderney charged with robbery. The allegation is that after finishing a shift as a waiter at the Braye Beach Hotel, Jef got into an argument with a customer, Lance, punched Lance and hit him over the head with a bottle, then ran onto the beach, got onto Lance's jet ski which was parked there with the keys in, and rode out to sea on it. Jef was arrested later at his apartment, the jet ski was never found and Jef claimed to police that it had stopped and sunk and he had swum back to shore.

- 3.2 What would you expect to happen when the case comes before the Court of Alderney? Describe the procedure that will take place to get the case to trial.

(4 marks)

Lance now has no recollection of what happened. The prosecution are considering calling a barman at the hotel, Pierre, to testify at Jef's trial as he witnessed the events. Although he made a statement to police, Pierre is Jef's husband and is reluctant to appear in Court.

- 3.3 What options are open to the prosecution to use Pierre's evidence? Are there any obstacles?

(3 marks)

Against his advocate's advice, Jef decides to plead guilty although he claims (and wants to tell the Court) that he only slapped Lance for making a sexually suggestive remark to Pierre, he did not punch or use a bottle on Lance. This version is not accepted by the prosecution.

- 3.4 What steps, if any, would the Royal Court take in consideration of Jef's claim? What consequences might there be for the sentence that is eventually imposed on Jef?

(4 marks)

Sabrina is one of two partners in a law firm with six employees; she is a keen sailor and belongs to the Royal Channel Islands Yacht Club. In early 2018, Sabrina was engaged in conversation by a guest at the Club, Mrs Zuchini. Mrs Zuchini told Sabrina that she planned to purchase several houses and apartments in Guernsey in order to establish a portfolio of buy-to-let properties which could provide her with an income. Sabrina told Mrs Zuchini that she was a Guernsey Advocate and would be happy to provide the services of her firm. Mrs Zuchini agreed and subsequently used Sabrina's

firm to buy an apartment in Guernsey *'as a base for me to use when I am here'*. On this occasion Sabrina was not personally involved in any part of the transaction.

Thereafter, Sabrina and Mrs Zuchini often met at the Yacht Club. In spring 2018, Mrs Zuchini told Sabrina that she had found *'just the best'* property to begin her portfolio but that she was unable to go ahead with it as she was suffering *'temporary problems with my cash flow'*. She asked if Sabrina knew anyone who might be able to give her a short-term loan *'on a good rate of interest of course'*. Sabrina offered to provide the loan, Mrs Zuchini accepted and Sabrina then wrote a cheque for the full sum, using her personal account. She did not advise Mrs Zuchini to get independent legal advice. The property sale went through and, as she had promised, Mrs Zuchini repaid Sabrina in cash but in Euros, a month later. When Sabrina asked how she had so much cash, Mrs Zuchini replied that her tenants would often pay their rent to her in cash and she just kept it in her home.

Subsequently, Mrs Zuchini bought five more properties, each one being funded either by another loan from Sabrina (always swiftly repaid) or by payments made by other people into Sabrina's client account.

Not long after the latest property purchase, Sabrina attends a local training seminar, also attended by members of the finance industry. She learns that there is an adverse 'Worldcheck' report from late 2017 in relation to Mrs Zuchini's husband, Phillipe. The report specifies that a number of allegations of corruption relating to the award of government contracts have been made against him, because of his position as Housing Minister for the Italian government. Whilst no charges have been laid, he has been forced to resign his position whilst a formal investigation is carried out. Sabrina quickly checks her office file. Aside from basic details such as date of birth and brief details of relatives, there are no other personal details for Mrs Zuchini on file. Sabrina meets Mrs Zuchini at the Yacht Club and tells her that she is worried because she has realised that she has no formal records showing Mrs Zuchini's identity and nothing to show the actual source of any of the money paid either to the firm or to Sabrina. Mrs Zuchini points out to Sabrina that *"everything balances, I am sure. I don't owe you any money so we are all straight, yes?"*

- 3.5 What criminal offences may have been committed by Mrs Zuchini or by Sabrina?
(4 marks)
- 3.6 If the authorities decide to carry out a criminal investigation, what steps are available to them to obtain additional information?
(3 marks)
- 3.7 Is there anything the authorities could do to stop Mrs Zuchini from disposing of her properties in Guernsey?
(1 mark)

QUESTION 4 (total 25 marks)

Guernsey police were keeping covert surveillance on a group of individuals suspected of involvement in large-scale drug smuggling. One of the group, Ken, was thought to be the leader. In June 2018, when it was discovered that Ken was planning a trip to France, taking his car on the ferry, the police placed a covert recording and tracking device on his car so that they could track his movements and record his conversations. On his return to Guernsey at noon the next day, his car was stopped and searched. 2 kg of cocaine and 2,000 MDMA tablets were found in a false compartment in the car. Ken was arrested and his mobile phone seized as evidence. The police have demanded his mobile phone pass code so they can look at his messages.

Ken is charged with being knowingly concerned in the fraudulent evasion of the prohibition of the importation of goods. The case is committed to the Royal Court and listed for a Plea and Directions hearing. Ken wants to plead Not Guilty and says he's forgotten his swipe code to the mobile phone. He claims that the drugs were planted in his car, and alleges that he has been 'set up' by someone with a grudge against him.

- 4.1 Does Ken have to provide his mobile phone code and what are the consequences if he doesn't? **(3 marks)**
- 4.2 Explain what will happen at the Plea and Directions Hearing. **(3 marks)**
- 4.3 What test should the prosecution apply when considering what to disclose to the defence about the surveillance operation? How might the defence challenge the prosecution decision? **(4 marks)**

The prosecution wish to use at trial the evidence of a French police officer who will testify about what she saw and also produce a video recording that she made of a meeting that Ken had with an unknown man. For reasons of convenience, it is not intended to call the officer in the courtroom but to present her evidence via a live link from France.

- 4.4 Can this evidence be tendered at trial in the Royal Court and how might it be adduced? **(5 marks)**

Ken has been separately committed to the Royal Court on a second charge relating to drugs. It is alleged that in March 2018 Ken was observed by customs officers arriving at the Marina in St Peter Port, alone in a rib craft at around 22:00. He was seen to manoeuvre the vessel to a standby pontoon and briefly disembark into a shaded area. A minute or two later, the rib moved off and moored up in its usual berth in the Marina. Ken was arrested as he left the vessel. A search of the area where the

rib had briefly stopped revealed 4kg of cannabis resin in the form of flat brickettes, wrapped in a plastic bag and wedged under a step.

At the Plea and Directions Hearing the prosecution present a single indictment containing two counts, the offences in March and June 2018.

4.5 What arguments might the defence put forward to challenge the validity of the Indictment, and what principles will the court apply to make a decision?

(5 marks)

Callum (aged 15) and Larry (14) are bored one summer afternoon, and decide to go to the Vale Tennis Centre where they find the rear door unlocked. They go into the communal kitchen, where Callum breaks into the honesty box, and steals the cash he finds inside. Larry watches him do this, but does not actively help him. Callum counts the money out on the table in front of Larry, and then uses the coins to obtain some sweets and soft drinks from the snacks dispenser in the kitchen. He puts the rest of the money in his own wallet. He gives Larry a bag of crisps and couple of cans from his haul, which Larry stuffs in his pockets, intending to consume them a bit later. They both then leave the Tennis Centre by the same route.

4.6 What criminal offences may have been committed by either Callum or Larry? Would your answer be any different if Larry was 11 years of age?

(5 marks)

END OF PAPER