

GUERNSEY BAR EXAMINATION

2.00 PM, 29 APRIL 2016

COMPULSORY PAPER TWO

ETHICS AND PROFESSIONAL CONDUCT

ONE HOUR

**CANDIDATES ARE REQUIRED TO ANSWER ALL QUESTIONS
THE MARKS AVAILABLE FOR EACH QUESTION ARE SHOWN BELOW. NOT
ALL QUESTIONS CARRY EQUAL MARKS.**

- **Question 1 – 11 MARKS**
- **Question 2 – 11 MARKS**
- **Question 3 – 28 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

(total marks - 11)

1. David who lives on the outskirts of Paris, France, approaches you to act for him. He is moving to Guernsey in connection with his employment and is looking to buy a house in the island. You should assume there are no housing licence issues. He has some savings having worked as an accountant in Paris for 10 years before this move.

1.1 For what must your firm have registered with the GFSC in order to carry out conveyancing work?

1.2 What documentation might you seek from him in relation to client due diligence or other client checks?

1.3 What information should you provide to him and when?

David tells you that he has not used an Advocate in Guernsey before and it is his new employer who pointed him in your direction. His employer has indicated he will contribute 50% of David's relocation costs including legal fees on the basis he uses you as opposed to another firm, as the employer has indicated he knows your charges are always quite reasonable.

1.4 What issues, if any, arise and how should you deal with any such issues?

QUESTION 2

(total marks - 11)

2.1 Having settled in the island and bought a house David approaches you again after 2 years. He is looking to move to a bigger home as he is looking to marry his fiancée in the next 6 months and they are planning a family. The sale proceeds from his first house will be invested in this house (covering 20% of the price and costs). He will also take a new mortgage for 60% of the purchase price and associated costs. The remaining 20% is to be funded by David's current managing director by way of a personal loan. David and his fiancée Susan both wish to see you regarding the vesting of the property as Susan is divorced and has children from her previous marriage. It is apparent from an email from David to you they do not agree regarding the appropriate vesting. What steps should you take before meeting them?

2.2 The issue of the vesting is resolved. They next want to discuss with you the loan from the employer. According to David, a loan agreement is to be drafted by a colleague of yours. Does this cause any issues?

2.3 David shows you the loan offer letter. It states at the end that the borrowers must obtain a certificate from their Advocate that they have obtained independent legal advice. You discuss with them general principles concerning loan agreements, default and enforcement. You suggest another meeting when the loan documentation is actually received. Susan indicates that your explanation has been very helpful and that she will not need another appointment. David indicates he will return for a further discussion. What issues arise, if any?

QUESTION 3

(total marks - 28)

3 Simon telephones your office regarding the purchase of a hotel business currently operated by a husband and wife in their own names. He wishes to operate the new business in a company name and asks if you can deal with the incorporation of a new company for him.

3.1 What licence from the GFSC should persons who deal with incorporation of companies hold?

3.2 Although you are not an accountant, Simon asks you to look at the company accounts (both end of year and management accounts) in case they are relevant to any warranties you wish to draft. Upon examining the same you note that the figures in the accounts do not match the sales advertising documentation in that the income in the end of year accounts is lower. Simon indicates he is not concerned and says he suspects the current owners received cash payments which were not declared. He expects that he will do the same. What issues arise?

3.3 Simon indicates that your firm acted for the vendors previously as he had noted reports in the Guernsey Press when doing his research on the business. He suggests you examine the old files to see if it sheds any light on the financial differences. What should you do?

3.4 In connection with the purchase consideration Simon indicates that he has been buying and selling hotels for 20 years and has built up a significant portfolio. He will be funding the transaction himself through a company he already owns. What due diligence might you seek or what checks might you undertake?

3.5 Shortly after you learn of Simon's company's involvement he advises you that he has paid the purchase consideration to the vendors as he did not want to lose the deal and he trusts them. He explains it was a timing issue as this company trades in China and he wanted to avoid a potential civil claim in that jurisdiction.

Do any issues arise as a result of the payment to avoid a potential civil claim?

3.6 If you are suspicious about the transaction, to whom do you report the matter and what would you then expect to happen? Are there any things you should not do?

3.7 The vendors are concerned that they have been paid before any documents are signed and suggest you can hold the money in escrow as they are happy to trust an Advocate. How should you deal with this?