

GUERNSEY BAR EXAMINATION

9.30AM, 24 APRIL 2017

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 - 10 MARKS
- Question 3 - 10 MARKS
- Question 4 - 20 MARKS
- Question 5 - 25 MARKS
- Question 6 - 10 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)

MATERIALS PROVIDED:

1. Human Rights (Bailiwick of Guernsey) Law, 2000, Order in Council and consolidated text
2. Protocol No. 3 to the UK Treaty of Accession to the EEC

QUESTION 1

(total - 25 marks)

The Prime Minister has, under Article 50 of the Treaty on European Union, notified the European Council of the UK's intention to withdraw from the Union. The two year negotiating period has begun. Politicians across the Bailiwick are anxious to ensure that the islands are represented during negotiations and their views and the interests of the islands taken into account.

Relations between Guernsey, Sark and Alderney are not running smoothly. In particular, the States of Guernsey committee charged with relations between the three islands of the Bailiwick, the Policy and Resources Committee, has announced that it regards the "intermeddling" of the Alderney and Sark politicians to be unhelpful and damaging to the economic and reputational interests of the Bailiwick. It wishes to lead the Bailiwick negotiations itself, on the basis that Alderney and Sark are mere dependencies of the principal island, Guernsey, which therefore has the right to act for the Bailiwick, and represent the Crown Dependency.

Ivan Eggo, a senior politician in the States of Alderney, consults you. He wants legal advice from a private firm, not trusting "those wily Law Officers who are clearly in the thrall of the Guernsey establishment". He avers that Alderney is a Crown Dependency itself, and entitled to be separately represented at any negotiations. Indeed, in his view, Alderney (and therefore Sark) have the right to attend independently, without any Guernsey presence. [For the avoidance of doubt, this is an imaginary scenario for Bar Exam purposes only.]

Please advise Mr Eggo on the following issues:

- 1.1 The constitutional status of Alderney. Your answer should include consideration of the following questions: Is it a separate Crown Dependency? Is it a dependency of Guernsey? If so, what is the consequence of that? Is its government subordinate in any respect to that of Guernsey? Does it have a different relationship with the Ministry of Justice to the relationship that Guernsey enjoys? Does Guernsey have any rights to represent or act on behalf of Alderney so far as external relations are concerned? Regarding rights of representation, what is the position where Guernsey has an entrustment from the UK to negotiate with sovereign states in respect of tax matters?
- 1.2 Do the courts and any other institutions of Guernsey perform functions for or in respect of Alderney? If so, explain briefly but precisely what the functions are.
- 1.3 Explore the same questions in respect of Sark [your answer need only explain any points of difference].

- 1.4 Explain, in detail, the respective rights to legislate of the three parliaments and governments of the Bailiwick. Explain in what cases (if any) and by what means Guernsey may legislate for and in respect of Alderney and/or Sark, citing examples where possible.

QUESTION 2

(total - 10 marks)

“When the UK leaves the EU, the legal structure governing Alderney's relationship with the Union will fall away. Protocol 3 will cease to exist. That issue cannot be ducked. Alderney must, in short order, come up with answers to the following questions:

- does it want to try and replicate the current relationship with the EU or seek some new arrangement?*
- does it want to strike out on its own in securing its future, or does it want to work in concert with Guernsey - and, possibly - with Jersey? And;*
- if it does want to work with Guernsey, what should be the rules of engagement with its larger neighbour?”*

Source:

Alderney's Choices - A report on how the island is governed (University College London, September 2016)

Discuss the statement above. Your answer should include (i) a brief analysis of Alderney's current legal relationship with the EU and (ii) a brief assessment of any potential new arrangements that may be possible. You should also include in your answer (iii) consideration of whether a different arrangement should, conceivably, be sought for each of the three islands of the Bailiwick and (iv) if so, what any such different arrangements might be and what sort of constitutional issues might arise from (or perhaps prevent) any such arrangements.

QUESTION 3**(total - 10 marks)**

You are contacted by Mr de la Forêt who is the CEO for a plant health company based in Guernsey. Mr de la Forêt is very proud of his business and particularly proud that it meets EU standards in relation to all its plant health exports. He is concerned that in consequence of Brexit, certain EU standards which currently apply to Guernsey under Protocol 3 might no longer apply. He wants to know if the States will ensure that relevant EU standards will continue to be applied in respect of his and other plant health businesses operating within Guernsey. He also wants to ensure that his business's rights to trade with the EU are preserved going forward. He asks if you could briefly explain the democratic process in Guernsey and how he might best influence States members in future as regards any proposals or decisions made during the Brexit process which might affect his situation.

Advise Mr de La Forêt accordingly.

QUESTION 4

(total - 20 marks)

The States control the collection of roadside waste, by means of waste collection licences issued under the Waste Collection (Guernsey) Law, 2012 (which only exists for the purpose of this question). It is a criminal offence (under s.15, not reproduced below) to offer a waste collection without a licence. Waste2Riches has the only licence for scheduled roadside waste collection and makes a large profit by only collecting on a monthly basis and charging very high fees. Mrs Mona Lott from Waste2Riches has come to see you, she has discovered Mr Dusty Rhodes, who collects waste on an ad hoc basis under the Waste (Small Collection) (Exemption) Regulations, 2012, offers a waste pick up on set days with very reasonable charges. This has reduced customer numbers and affected her profit.

Mona has spoken to Ophelia Payne who works for the Environment and Infrastructure Committee, as the Committee has the power to issue enforcement notices to people who appear to be breaking the law (under s.6, not reproduced below). Ophelia has said that because Dusty only offers waste pick up for a small number of people he is not breaking the law and can continue collections, she does not propose to issue an enforcement notice.

The relevant provisions of the law and regulations are below -

Extract from the **Waste Collection (Guernsey) Law, 2012**

“..Requirement for Guernsey waste collection licence.

1. No vehicle shall be used for the recycling or collection of domestic or commercial waste ("waste collection") in Guernsey unless –

- (a) the operator or driver of the vehicle holds a licence (a "Guernsey waste collection licence") granted to him by the States Environment Department authorising him to operate vehicles for the purpose of the collection in question, and
- (b) the terms and conditions of the licence are complied with.

Collections to which this Law applies.

2. (1) This Law applies to any waste collection in Guernsey by any vehicle, other than –

- (a) a vehicle without an engine, or
- (b) collection of a class or description prescribed by regulations of the Department, or
- (c) a particular collection specified in an instrument of the Department.

- (2) *An instrument made under subsection (1)(c) –*
- (a) *shall be signed by the Minister of the Department or by a person authorised (whether by name, class or description) by the Department in that behalf,*
 - (b) *shall, as soon as is reasonably practicable, be published in La Gazette Officielle, and*
 - (c) *may be varied or revoked by a subsequent instrument so made. ...”*

Extract from the **Waste (Small Collection) (Exemption) Regulations, 2012**

“...Exemption.

1. (1) *Collections of the description set out in paragraph (2) are prescribed for the purposes of section 2(1)(b) of the Law; and the operator or driver of any refuse wagon used for waste collection is accordingly exempt, in respect of that collection, from the requirement imposed by section 1 of the Law to hold an Guernsey refuse collection licence.*

(2) *The waste collections referred to in paragraph (1) are collections by a small refuse collection operator....*

Interpretation.

7. (1) *In these regulations –*

“small refuse collection operator” *means a service for waste collection, where the refuse wagon –*

- (a) *is hired by the customer for the purposes of a collection of particular waste, and*
- (b) *has a maximum refuse capacity of 2 tonnes,*

...and other expressions have the same meaning as in the Law.

Citation and commencement

8. *These regulations shall be cited Waste (Small Collection) (Exemption) Regulations, 2012 and shall come into force on the date on which they are made.*

Dated this 4th day of May 2012

*Deputy Y MEE
Minister of the Environment Department
For and on behalf of the Department....”*

- 4.1 Mona explains that the reason why collections are so expensive with Waste2Riches is because the government has created such a complicated regulatory system that it has cost Waste2Riches over £100,000 to get a licence that gives it a 2 year monopoly on the collection of waste. (The licence was granted in 2015.) However, the takings have been greatly affected by Dusty's business.

Advise Mona.

- 4.2 Using the facts above, consider what advice you would give instead to Ophelia Payne based on the following facts. (This question assumes that you have not advised Mona, so no issue of conflict of interest arises.)

Ophelia explains to you that the Committee considers that the refuse collection scheme isn't working; the streets are over-flowing with waste as not many people can afford the Waste2Riches prices. Whilst Ophelia considers that Dusty Rhodes may be technically breaking the law, he is performing a useful public service as the streets are now much cleaner in the areas in which he operates. Ophelia knows that he can't afford to buy a waste licence and so wants to turn a blind eye to the breach. Ophelia thinks that Waste2Riches are just moaning unnecessarily. They have made enough money from their licence and she wants them to go away. Ophelia doesn't propose to issue an enforcement notice to Dusty or to advise him that he may be committing a criminal offence.

Advise Ophelia.

QUESTION 5

(total - 25 marks)

An Advocate, Iona Bigyot, has asked you to help prepare a note for the partners in your firm's new office in Vanuatu; they are interested in the courts of other island jurisdictions and you are asked to write about the Court of Alderney, the Court of the Seneschal and the Petty Debts Court in Guernsey.

5.1 You are specifically asked to address:

- the development of the Courts since they were first established;
- the identity, appointment and functions of the members and officers of the Courts;
- the civil (and, where relevant, the criminal) jurisdiction of the Courts;
- the Courts' relationship with other courts in the Bailiwick and further afield; and
- the role and duties of Advocates appearing before the Courts.

5.2 You are also asked to consider any difficulties which face the Alderney and Sark Courts; you should suggest possible reforms, highlighting the advantages and any disadvantages of each.

QUESTION 6

(total - 10 marks)

The Court of Appeal has requested your assistance as amicus in relation to the customary law of Guernsey as neither side is legally represented. You are requested to draft a note to explain:

- (a) the origins and development of the customary law;
- (b) the modern status of the customary law;
- (c) how the customary law can be changed (giving any relevant examples);
and
- (d) in which areas the customary law of Alderney and Sark differs from the customary law of Guernsey.

As one of the litigants in person might wish to undertake some further research, your note should refer to at least three of the major commentators on the customary law, explaining the nature of their work and discussing its significance in the overall context of the customary law.