

GUERNSEY BAR EXAMINATION

9.30AM, 27 APRIL 2018

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 - 16 MARKS**
- **QUESTION 2 - 20 MARKS**
- **QUESTION 3 - 6 MARKS**
- **QUESTION 4 - 8 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 (16 marks)

1.1 Albert approaches you to act in relation to the purchase by his son Edward and daughter-in-law Mary of a house in Guernsey. He is lending them the purchase monies to be secured by a Bond over the house. He wants your firm to act in the purchase transaction and to prepare the conveyance and the Bond. He asks that a colleague in your firm should act for the vendor. What issues arise?

(7 marks)

1.2 When you meet Albert, he advises that the loan is in fact from him and his wife, Victoria. He says she is happy with the agreed terms as the loan is for the benefit of their son. They will lend the sum of £400,000 which equals the purchase consideration for the realty and personalty. Edward will provide monies to cover the other costs himself. There is only one condition which is that if Edward and Mary were to separate, Edward must be able to buy out Mary's interest in the house. The loan is to be repaid to Albert and Victoria over a 20 year period. What issues do you now need to consider?

(5 marks)

1.3 Albert contacts you to say that although he wants the Bond to show a joint liability to repay on the part of Edward and Mary, this is only to ensure Mary will sign. He does not however want to enforce any claim against his son and presents you with a letter he wishes to sign in your presence to that effect. Does this have any impact on how you and your firm must act?

(4 marks)

QUESTION 2 (20 marks)

2.1 Charles wishes to instruct you in relation to the purchase of a business. He is looking to acquire the shares in a company which operates a restaurant in leased premises. An existing company, which he already owns with his brother Andrew, will take the assignment of the lease. What steps should you take when establishing your client relationship both from a due diligence perspective and otherwise?

(12 marks)

2.2 Following on from your instructions above, when you receive a draft lease assignment you note there is a guarantee provision which no-one had told you would be there. You check with Charles who apologises and indicates the guarantee was always planned, as he and his brother are not in a position financially to satisfy the landlord company's financial criteria for approval. They have therefore decided to seek a guarantor who will also be injecting some money into the company. Does this impact on your client take-on procedures or due diligence procedures? Explain your answer.

(4 marks)

2.3 As a result of the involvement of the previously unknown guarantor you realise that your firm previously acted in a dispute against the guarantor which never reached court, but during which doubts were expressed as to the guarantor's financial good standing. What should you do with this information? Explain your answer.

(4 marks)

QUESTION 3 (6 marks)

3.1 William telephones your office and advises you that he is hoping to set up a computer software business in Guernsey. He wishes you to provide legal services and advice in connection with the lease of an office and the drafting of contracts for the licencing of his software in other jurisdictions. He explains that his software is specialised accounting software which he intends to licence to clients in a number of Middle Eastern jurisdictions. After a few days you receive a call from a client of William asking for bank details as he has not yet received a draft licence agreement but wishes to set up payments in relation to the supply of the new software. You ask William who indicates that he has not set up a bank account yet.

A few days later your accounts department receives a cheque made payable to the business name chosen by your client. There is an invoice attached to the cheque indicating someone has issued an invoice in the name of the client's business using your office address.

What action should the accounts department take and what action should you take?

(6 marks)

QUESTION 4 (8 marks)

- 4.1 You are employed by a firm of advocates and are asked to produce an advertising campaign for your firm to include advertising on social media, emphasising your particular areas of expertise. Your employers ask for a summary of the rules governing the campaign for consideration before giving the go-ahead. Summarise those rules.

(8 marks)

END OF PAPER