

**GUERNSEY BAR EXAMINATION**

**9.30 AM, 21 MAY 2019**

**PAPER ONE**

**CIVIL 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 - 40 MARKS**
- **QUESTION 2 - 20 MARKS**
- **QUESTION 3 - 20 MARKS**
- **QUESTION 4 - 20 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. The Evidence in Civil Proceedings (Guernsey and Alderney) Rules, 2011**
- 2. The Royal Court Civil Rules, 2007**

## **QUESTION 1 (total 40 marks)**

Philippa Pinchemain came to see you last week in relation to an accident she had on 3 June 2016. You vaguely recalled the incident because it had been reported in the newspaper and one of your colleagues had moaned on the Monday morning about having to take a detour when the Forest Road had been closed for hours as a result of it.

Ms Pinchemain tells you that she had been driving her Fiat 500 home from work in dry conditions when a blue sports car had shot out of the Forest Road Garage and driven into the side of her car. She thinks it was a Mercedes. As a result, the bonnet of the blue car had become embedded in her driver's door and her vehicle had been shunted on to the pavement. She was trapped in her car until the emergency services attended and freed her. Whilst she was still in her car, the young policeman who spoke to her told her that the driver of the blue car had said he just did not see her Fiat and that he thought she must have been driving too fast anyway, but the policeman told her she was not to worry because they had smelt alcohol on the driver's breath and would be testing him. Once freed, she had been taken to the hospital by ambulance.

The car, which at the time was a couple of years old, had been a write-off. It was insured for £10,000, being approximately what she had paid for it in 2015. She has now purchased a replacement vehicle, but she seldom drives because the accident has dented her confidence. She has been seeing a private counsellor at least monthly since March 2017.

As a result of the accident, she sustained a broken right ankle, a nasty whiplash injury and cuts and bruising. She was unable to work for three weeks. Her employer is a trust company, for which she acts as a senior administrator. She believes that she has already been overlooked for further promotion because she always has to leave on time and cannot work late, as others do, because she needs to catch a bus home. At the time of the accident, she had been playing hockey for the Island for a number of years, but has since had to give up playing. She was a keen dancer and was hoping that one day she would be chosen as a "professional" in one of the charity dance competitions, but that is another activity she has given up. Her ankle still aches from time to time and she thinks she walks with a different gait now, although it is not really a limp.

She remembers that the blue car had been driven by Dave Dorey. Mr Dorey was convicted in the Magistrate's Court of driving without due care and attention in, she recalls, October 2016. She had been ready to attend as a witness, but Mr Dorey had changed his plea at the last minute. She sees him around from time to time when she goes shopping during her lunch hours. However, she does not recall seeing him for the last few months.

Ms Pinchemain also explains that the matter has drifted on a bit because her GP initially told her that it was better to wait a while to see how her injuries settled. She was fortunate that she was happy living at home with her parents and that her salary has always been more than enough for her needs. She had been to see an Advocate in 2018, although that Advocate is now no longer in practice, who had agreed to take her on as a client but had then done nothing. She had forgotten about it all for a while, but recently had been out with some friends where the discussion had turned to public transport and she had been extolling the virtues of the buses because of how she now uses them so much. Someone she had not met before was there and said that there was a limit affecting claims about accidents that she ought to be aware of, hence her visit to you.

- 1.1 What further information, if any, would you wish to have to enable you to progress the matter and from what source or sources would you look to obtain it?
- 1.2 Advise Ms Pinchemain what steps you can take on her behalf to enable her to obtain compensation for her losses following the accident on 3 June 2016.
- 1.3 Explain to Ms Pinchemain the ways in which Mr Dorey is most likely to respond and the procedural steps that would follow in the event that he enters an appearance.
- 1.4 Outline for Ms Pinchemain the evidence that will need to be gathered to pursue her claim, covering the way in which such evidence will need to be presented and any applications that will need to be made to Court in that regard.
- 1.5 Explain to Ms Pinchemain about any options open to her to seek to resolve matters other than by way of a trial before the Court, offering your opinion about the pros and cons of doing so.
- 1.6 Draft a simple Cause setting out the basics of her claim.

## **QUESTION 2 (total 20 marks)**

The Bursar and Clerk to the Governors at The Ladies' College came to see you at the start of this week to raise with you a number of concerns she has about fee-paying pupils at the school whose parents or guardians might turn into bad debtors.

The worst case involves a family whose three girls are at the school. Their father, Donald Day, had met with the Bursar just before last Christmas to say that he was no longer in a position to pay for all three girls to continue at the school because he was facing a cashflow crisis. His financial problems had led to him and his wife, Wendy, separating and they had been unable to agree what to do about their daughters' education. Donald had favoured sending the youngest to a States school, leaving the eldest to complete her GSCEs this summer and possibly letting the middle girl continue her GSCE courses to their conclusion in 2020. Wendy, however, was adamant that the girls should stay at The Ladies' College until each girl had finished their secondary education and that her Advocate would ensure that Donald paid every last penny piece, even if he did not then have enough money left from which to feed and clothe himself. The Bursar, after consulting the Principal and the girls' teachers, had some sympathy with the family's position and so had not insisted that the outstanding fees for that term in 2018 be paid, and wrote to Donald proposing a payment plan to meet the liabilities in respect of all three girls.

Correspondence had then passed between them during the course of last term, but without any resolution being achieved. Wendy simply failed to respond to any correspondence. As a result, no fees had been paid at all for the current academic year.

Normally, the Bursar would not be concerned, but the middle girl had recently told her class teacher that her father was planning to leave the Island because her mother had started a new relationship and her father was plain fed up with the whole situation. When gently questioned about this, the girl volunteered that her father had just got a job in the Cayman Islands and would be starting afresh there. She was excited because this development meant she and her sisters would get to go on great holidays.

The Bursar in particular wants your advice as to whether there are any steps that might be taken because she knows from seeing Donald when he drives the girls to school that he has a very nice Mercedes motor car, which she thinks must be top of the range and probably worth more than the total of the fees currently unpaid. She had asked the eldest girl about the car shortly after being told of Donald's plans to leave the Island and had been told that Donald had already arranged for the car to be shipped off the Island at the end of May so that it could be stored at their uncle's house in Devon in case the job her father would be starting in July did not work out.

- 2.1 Advise the Bursar as to what steps might be taken on behalf of The Ladies' College before Donald and/or the car leave the Island to afford some protection against the debts that have been accruing.
- 2.2 What, if anything, do you suggest the Bursar could and should do to engage with Wendy either directly or through her Advocate?
- 2.3 Because the Bursar tells you that she has e-mail addresses for both Donald and Wendy, prepare the text for the Bursar to be able to use if minded to send them both e-mail correspondence expressing the school's concern about the current position.

### QUESTION 3 (total 20 marks)

You are acting for Dougal de Garis, who is the defendant in an action commenced in 2017 by Percy Poole.

The Cause in the matter claims damages for negligent building work. Dougal had been contracted by Mr Poole to construct an extension at Mr Poole's house up in the Vale. The value of the contract was approximately £145,000. Dougal had completed the work in July 2015. He had done most of it himself, using his son, Sammy, as his employee and contracting in various tradesmen for the bits that were more technically challenging for them. One of those contractors had been Eddie Embury, who had done the wiring. Eddie had retired shortly after the completion of the project and had left the Island to go and live in Thailand. Dougal had heard early in 2017, at about the same time that Mr Poole commenced his proceedings, that Eddie had died in a road traffic accident.

The claim against Dougal is based on an electrical fire having started in the extension on which Dougal had worked. The fire resulted in the whole of Mr Poole's extended building being destroyed. The house had since been re-built and the claim against Dougal is for the whole of those building costs, plus the value of the items in the house that were destroyed.

When the Cause was tabled, it was placed *inscribe* and Dougal's Defences were tabled 28 days later. One element of the Defences pleaded was to rely upon a term in the building contract that limited Dougal's liability to the value of the contract. The Plaintiff's Advocate applied for a date for a case management conference to be fixed and that application was then adjourned for three months by consent to enable the parties to consider what directions could be agreed. Very little happened during that period. You had been confident that fairly standard directions could have been agreed, but the Plaintiff's Advocate went sick. His secretary contacted you just before the three-month period elapsed and suggested a further adjournment by consent. Dougal was happy to accede and so you signed a second consent order adjourning the application until February 2018.

Nothing has happened since then. Dougal's instructions to you were to let Mr Poole have as long as he wanted because the longer it all went on the better Dougal felt about the whole affair. However, in the last week or so Dougal has contacted you again and asked you to bring matters to a close because he has become fed up having to tell those who ask that he is currently facing proceedings that have yet to be determined. He explains that the delay is now affecting his business.

- 3.1 Explain to Dougal the current state of the proceedings commenced by Mr Poole and the consequences that flow from that.
- 3.2 Set out the procedural options that Dougal can now pursue and assess the relative merits of the various courses that could be followed. In doing so,

Dougal wishes to know the costs implications of each and precisely what it is that would need to be done on his behalf.

- 3.3 On the basis that Dougal will accept your advice as to the best option for him to pursue, draft a letter to Mr Poole's Advocate setting out Dougal's position.

**QUESTION 4 (total 20 marks)**

In his most recent general update statement in the States of Deliberation, the President of the Scrutiny Management Committee touched upon the possibility of that Committee conducting a review into certain aspects of access to justice. The context was that one of the People's Deputies (unnamed) had recently complained that even a basic petty debt claim resulted in an alleged debtor willing to settle the claim after being summonsed, and before the hearing being required to pay the fee incurred by a plaintiff in effecting service through Her Majesty's Sergeant when, in the 21<sup>st</sup> Century, service by post or better still electronic means would be far cheaper for all concerned.

As a result, the Greffier has just written to all Advocates asking them to comment on the means by which service of process in Guernsey's Courts is effected. Your head of litigation has suggested to you that you prepare a response that could be sent on behalf of the firm's Advocates. Although you have been given licence to set out the response in whatever manner you see fit, the brief conversation you had suggested that rehearsing briefly the current position and then offering any suggested changes to service requirements, both in relation to Petty Debt Court matters and in the Royal Court, if applicable referring to the position elsewhere, might be helpful.

4.1 Prepare a draft of that response.

**END OF PAPER**