

GUERNSEY BAR EXAMINATION

9.30 AM, 13 MAY 2020

CRIMINAL PRACTICE AND PROCEDURE

THREE HOURS

CANDIDATES ARE REQUIRED TO ANSWER ALL QUESTIONS

THE MARKS AVAILABLE FOR EACH QUESTION ARE SHOWN BELOW. 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)

The Guernsey Police received a call from Angela on their Crimebusters phone line. She said that Dave had been dealing drugs and that he was going to take a 'mega' delivery of cocaine tomorrow, via the postal service. When asked how she knew this, she said that she had been told it confidentially by her best friend, Betty, who is Dave's girlfriend. Angela told the police that neither Betty nor Dave must know of her call, as Dave is '*a nasty piece of work*' and she would be in danger if Dave knew. She would not be a willing witness under any circumstances. She was clear that she did not want any reward for her tip off, and was not given any. The telephone call was recorded and saved by the police call centre.

Following Angela's call, a covert surveillance post was set up in a flat close to Dave's address. The flat was owned by Fred, who was concerned that his cooperation with the police would become general knowledge. Officers reassured Fred that no one need ever know they had been there.

A plain clothed officer, PC 007, was dispatched to wait discreetly for the postman to arrive the following day. PC 007 was waiting alone inside an unmarked and stationary vehicle at the entrance to the clos when the postman arrived. From a distance PC 007 saw Dave take possession of a large postal package, which was the signal for the officer to quickly close in and make an arrest. In his subsequent witness statement, PC 007 said that he activated flashing blue lights that were discreetly installed on the front grille and the dashboard of the unmarked vehicle and that he drove very quickly, over the short distance, to Dave's front door. Upon seeing the vehicle, Dave dropped the unopened package and started to run away down the road. PC 007 quickly exited the vehicle, and gave chase, shouting "police, stop!" Dave was quickly caught and arrested by PC 007, "for importing cocaine". PC 007 then cautioned Dave.

1.1 Were the reasons given for the arrest adequate? **(1 mark)**

When it was examined, the postal package was found to contain 6 kilos of cocaine.

Dave was interviewed under caution. He said he had no idea who ordered the package, or why it was being delivered to his address, but he had nothing to do with it. He suggested that someone was trying to frame him. Dave denied deliberately running away from the police. He said that he saw a vehicle quickly accelerate towards his front door. There was nothing to mark the vehicle as a police vehicle, and there were no flashing lights on the vehicle. He had no idea it was a policeman trying to arrest him. Having experienced violence a number of times in his life, he thought that this was one of his enemies seeking to hurt him. He ran because he was fearful for his own safety. He did not hear anyone shout "Police, stop!". Had he known it was a police

officer, he would have remained at the scene to “*straighten this whole misunderstanding out*”.

Whilst Dave was being interviewed under caution, a lady called Gertrude arrived at the police station. Having learnt on social media that Dave had been arrested, she said that she wanted to give some further information. She provided a witness statement, in which she said that she had been at a house party the previous evening, when she had overheard Dave boast that he was OK for ‘blow’ as he was expecting “*a load of coke to arrive in the post tomorrow*”. She described herself in the signed statement as “*an acquaintance of Dave’s; I’ve only spoken to him a few times and don’t know him at all well.*” She told officers that she was willing to attend court. The interviewing officer did not know about her statement and did not put any of it to Dave in interview.

- 1.2 If Gertrude attended a trial and gave the same account in court, under oath, do you consider that her evidence would be admissible? Briefly explain your answer. **(3 marks)**

After interview, the custody officer reviewed the evidence against Dave. The album of photographs taken from the observation post showed Dave receiving the package and running away. Only three photographs showed PC 007’s unmarked vehicle in shot, and none of these photographs showed the vehicle to be displaying any “flashing” lights. The custody officer put this down to the camera catching the wrong moment, with the shutter catching the lights in the “off” position, rather than the “on” position. The custody officer concluded that Dave knowingly ran away from a police officer, suggesting a guilty conscience. The custody officer also took the view that Gertrude’s statement was particularly compelling because she had no obvious connection with Dave and could not have known that the seized package contained cocaine. He decided to charge Dave and told the interviewing officer not to bother re-interviewing Dave about Gertrude’s statement as there was sufficient evidence to charge.

- 1.3 Should the police have conducted a further brief interview to put Gertrude’s witness statement to Dave? Explain your reasoning. **(3 marks)**

Dave was charged and committed to the Royal Court, pending trial. The police provided the prosecutor with copies of the following:

- a) A disc containing the audio of Angela's telephone call to the police;
- b) The album of photographs taken from the covert surveillance post;
- c) Internal communications between law enforcement, revealing the precise location of the covert observation post.

1.4 What action should the prosecution take in relation to each of these documents? What test(s) should be applied and what concerns would there be in relation to disclosure to Dave's Advocate? Is any further information required in order to make a decision? **(10 marks)**

Following a meeting with Dave to discuss the evidence, Advocate Harris, Dave's Advocate, wrote to the prosecution in the following terms:

"My instructions are that my client and Gertrude are ex-partners. They were in a six month relationship last year. The relationship ended badly, and Gertrude has held a grudge against my client ever since. Whilst it is conceded that a house party did take place, a conversation about "coke" or "blow" between my client and another gentleman certainly did not. Further my client instructs me that this is not the first time that Gertrude has lied about an ex-partner. Gertrude previously lived in Paris, and made a false accusation against her then-boyfriend Jean. Whilst we do not know the precise nature of the false allegation against Jean, we do know that the Paris Police Prefecture ("PPP") investigated the matter and that Gertrude made Jean's life a living hell as a result of her malicious lies. I am afraid we do not have any further information, and nor are we able to obtain any further information. We (the defence) do not have the resources to look into this further, but I presume you will be doing so because it would be a useful step to take."

Advocate Harris' letter continued:

"From their relationship, my client has learnt that Gertrude is an extremely troubled individual, and almost certainly suffering from a serious mental illness or illnesses. I understand that she has regular appointments with a psychiatrist and has spent time as an in-patient with the Mental Health Services. Please disclose all of her medical records as a matter of urgency."

1.5 Is there any obligation on the Prosecution to comply with Advocate Harris' requests, and what practical steps could the prosecution take to address these allegations? Include in your advice the relevant legal test(s) applicable to those decisions. **(5 marks)**

The prosecutor and the police discuss Advocate Harris' letter and (rightly or wrongly) decide that enquiries should be made into Gertrude's allegation against Jean. They manage to find out from the PPP that Gertrude did indeed make an allegation of rape against Jean three years ago. The PPP had investigated the matter, but decided that there was insufficient evidence to start a prosecution. No further action was taken against Jean. Gertrude was not charged with anything, and nothing in the PPP file suggested that her complaint was demonstrably false; it was simply that her word alone was considered insufficient to prove such a serious allegation against Jean.

- 1.6 What from this enquiry, if anything, should the Prosecution disclose to Advocate Harris, and why? **(3 marks)**

QUESTION 2 (total 25 marks)

GLOBAL Bank provides banking services for a number of companies based worldwide. In particular, GLOBAL opened an account in 2015 for TRIBUNE, an asset management company based in Switzerland. TRIBUNE were in turn the External Asset Manager for Colonel Buckshot, the previous Governor of Monrovia, Liberia.

In Guernsey, GLOBAL bank has an office based in the High Street, St Peter Port; the head office is located in another European Country. You are approached by Mr Smith, a recently appointed member of the 'Risk, Legal and Compliance' ('RLC') committee at GLOBAL bank. He explains that when the bank opened the account, it relied upon the KYC provided by TRIBUNE which consisted of a passport and utility bill in the name of Colonel Buckshot. Internally, they had undertaken a 'World check' search, which confirmed that Colonel Buckshot had previously been Governor for oil and utilities in Monrovia for a 3 year period in the late 1990s.

2.1 At this stage is there anything further you would wish to clarify with Mr Smith about the due diligence that had been undertaken? **(2 marks)**

The initial deposit in 2015 was for \$35m and Mr Smith explains that file shows that the source of wealth was recorded by TRIBUNE as being, 'previous savings built up from a Liberian property portfolio'

Following taking on the account, GLOBAL bank made a number of \$1m annual payments to an off shore trust account based in the Cayman Islands. Nothing else was known about this trust. There currently remained \$30m in the account plus interest.

Mr Smith then explains that in September 2018, the bank became aware from a number of online sources that Colonel Buckshot had been arrested in 2016 by the Liberian authorities for corruption and embezzlement surrounding the awarding of oil exploration contracts whilst he was Governor for Monrovia. Having initially denied all the allegations, the Colonel had left the jurisdiction and was currently residing in Switzerland. At the time the bank became aware of this (in 2018) the matter was discussed by the RLC and it was agreed that since there had been no conviction and as Liberia had a reputation for being pretty corrupt anyway, the account could continue to be serviced as before. The file contains a note recording the decision, with the words '*innocent until proven guilty*'. There was a further note placed on the file to monitor the outcome of any criminal trial, should the Colonel return to face trial in Liberia. No communications of any kind took place with the Guernsey Financial Intelligence Service or the GFSC.

2.2 Mr Smith is now concerned that both the bank and himself might have '*something to worry about*' and he wants your advice. Assuming that Mr Smith only started employment with the bank earlier this year, what advice would you give at this

stage? Are there any steps he or the bank should take? Please refer to any specific legislation. **(8 marks)**

2.3 Would your answer differ if Colonel Buckshot had remained to face trial and he had then been acquitted? **(4 marks)**

In a separate development, the competent authority for Liberia send a letter to the Law Officers requesting specific evidence located within Guernsey relating to the operation of the TRIBUNE account and the freezing of identified funds. The letter explains that they are investigating offences of corruption and money laundering against Colonel Buckshot and his associates, and further requested that local law enforcement officers attend the bank to ask certain prepared questions of some of the bank employees.

2.4.1 Is Guernsey able to assist with this request and if so, under what legislation? **(3 marks)**

2.4.2 What type of compulsive orders might Guernsey be able to obtain to carry out this request? **(4 marks)**

2.5 It is right that Guernsey, as an independent financial centre, should, if it so wishes, impose higher sentences for offences involving the financial sector than, for instance, in the UK. Discuss, using caselaw to illustrate your points. **(7 marks)**

QUESTION 3 (total 25 marks)

3.1 Should Guernsey codify the criminal law? Discuss the challenges and advantages in drafting a Criminal Code for the Bailiwick. **(6 marks)**

On 30th June 2019, the police executed a search warrant at Mr Ogier's home address in St Peter Port. In the extensive attic of the property, they found a total of 230 cannabis plants at various stages of maturity, including a number of seedlings. Most of the plants were in propagators, and there was plant fertiliser, plant pots and watering equipment alongside. In a wardrobe at the back of an upstairs bedroom police officers also found a quantity of bags containing a total of 150 grams of herbal cannabis material, together with a hand-written step by step guide to the cultivation of cannabis using the 'Sea Green' method. In another bedroom, they found a small safe containing £1500 in cash. A vehicle linked to Mr Ogier was parked in the street outside the address, and was found to contain a small quantity of cannabis and a set of scales. Later the same day, the police searched a vinery in the Vale which Mr Ogier was known to have visited, where they found a silver grow tent and eight discarded soil blocks containing the remnants of plant material.

Following the searches Mr Ogier was arrested and interviewed. He said that he was a heavy cannabis user and was trying to grow cannabis plants for his own use. He denied that he intended to supply the cannabis to anyone else. Several weeks later, whilst on police bail, Mr Ogier was arrested in his van outside a property he was renovating. Inside his van was found fertiliser, plant pots, silver tubing, scissors and electrical items, together with £2000 in an unmarked envelope.

Mr Ogier consults you for advice and asks you to represent him. He has been charged with production of a controlled drug, contrary to section 3 of the 1974 Misuse of Drugs (Bailiwick of Guernsey) Law, 1974. He tells you that he intends to plead guilty when the matter comes before the court. He explains that he had been given a number of cuttings of live cannabis plants from another user. He had planted the cuttings and grown them on but some had developed faster than others. He intended to keep the best ones and grown them on in the empty grow tent found in the vinery. He was using the 'Sea Green' method which he told you is a process geared towards growing plants in confined spaces. He expected only half the plants to grow to maturity. He had been using cannabis since 1999, and consumed up to 7 grams per day.

At court, the prosecutor tells you that he does not believe your client's account and it is clear your client has been engaged in growing cannabis commercially. He informs you that the prosecution will be asking the court to proceed with a drug trafficking enquiry and the matter must be heard at the Royal Court.

- 3.2 Explain to Mr Ogier how his case may be dealt with and the approach the Royal Court may take in sentencing him for the offence. What actions will you take?
(7 marks)

Mr Ogier describes himself as a property consultant and lives with his partner Sharon Bourgaize and their two children at the address in St Peter Port. The property is un-mortgaged, and is valued at around £650,000. The prosecution also discover that he also owns jointly with his brother a further property in the Vale, which he is in the process of renovating. The financial investigation team identify that Mr Ogier purchased a jetski last year for just over £7000, which is currently moored in the QE2 Marina. He has a bank account in his sole name which currently contains around £1600. Bank statements show that there are a great many cash transactions and in particular, a foreign currency transaction in 2015 which appears to relate to the purchase of a high value item in Thailand.

- 3.3 What actions do you expect the prosecution to take to confiscate Mr Ogier's assets and what process will the court take in making the assessment? Include in your answer any orders that the court may make during the proceedings, and what advice you will give to Mr Ogier.
(8 marks)

You are approached by Silvester who wants to appeal his conviction. He appeared unrepresented in the Court of Alderney charged with assaulting a police officer and using threatening words and behaviour. On his first appearance, he pleaded not guilty to both the offences. The case was adjourned for the prosecution to arrange a date to hear the case. When the case was listed again, S indicated that he wanted to change his pleas to guilty. However, when the charge was put to him, he responded '*not guilty but with mitigating circumstances*'. The Court told him that plea was equivocal, and after some discussion with the Clerk, he said that he understood and wanted to enter a guilty plea. This was accepted by the court, which proceeded to sentence him to a fine of £750 and 14 days imprisonment suspended for 2 years. In the course of his mitigation, S said: '*I deeply regret my actions and I am ashamed of the state I was in. I respectfully ask the officer to accept my sincere apologies.*'

He tells you that at the time of the offences, he had been hallucinating and thought the police officer had been about to attack him. He has recently discovered that 'a mate' had spiked his drinks on the evening of the offences, and that had he known this, he would not have pleaded guilty as he didn't think it was his fault.

- 3.4 Explain to Silvester what his options are for an appeal and advise him on his prospects of success.
(4 marks)

QUESTION 4 (total 25 marks)

- 4.1 Explain the circumstances in which you might make a submission of no case to answer, setting out the criteria which the court will apply in deciding the issue.
(5 marks)
- 4.2 You are on the Duty Advocate Rota, and receive a call from the Guernsey Police custody sergeant on a Saturday afternoon. A regular client of yours, Connor (aged 15 years), has been arrested and charged with offences of robbery and theft. The police want to keep him in custody until Monday when the court will be sitting. Connor wants to be released straight away and wants to know whether the police can refuse to bail him until he appears in court. Advise Connor upon what basis the police can keep him in custody. Would your answer be any different if Connor had passed his 17th birthday?
(4 marks)
- 4.3 On Monday when you attend the Magistrate's Court, you are approached by Ryan, who is jointly charged with Connor. He asks you to represent him as well. What is your response and why?
(2 marks)
- 4.4 Monty is at the Magistrate's Court for a first appearance on a charge of assault. He wants to know what the maximum sentence is and whether he would be better to go to the Royal Court. Explain his options and what will happen at the hearing today.
(3 marks)
- 4.5 Maria consults you about a drink driving charge to which she intends to plead guilty. From the police disclosures you can see that she has blown a breath reading of 120ug and that she has a previous conviction for a similar offence 4 years ago. She is concerned that she will lose her job at the Feisty Parrot restaurant, which is dependent on a permit from Population Management. Maria is a Portuguese national, and has worked in Guernsey on a seasonal basis for about 5 years. What do you advise her about the likely sentence?
(4 marks)
- 4.6 Your last client for the day is Clive. Clive is charged with arson and criminal damage, having set light to a large wheelie bin in the North Plantation after he was refused service at a take-away food outlet. He is in custody and the security officers tell you that he has been behaving bizarrely, running around the cells from wall to wall until exhausted. He appears to be confused and disorientated when you speak to him, and talks repeatedly about getting into a time machine

and going to see the Queen. What submissions do you make when the case is called on? If Clive were to plead guilty to the charges, what options are available to the court? **(4 marks)**

4.7 What will the effect of Brexit be on the criminal law in the Bailiwick of Guernsey? Illustrate your answer with examples. **(3 marks)**

END PAPER