

GUERNSEY BAR EXAMINATION

9.30AM, 10 MAY 2021

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.

- **QUESTION 1 – 15 MARKS**
- **QUESTION 2 – 15 MARKS**
- **QUESTION 3 – 15 MARKS**
- **QUESTION 4 – 12 MARKS**
- **QUESTION 5 – 13 MARKS**
- **QUESTION 6 – 15 MARKS**
- **QUESTION 7 – 15 MARKS**

PLEASE ENSURE THAT THE FOLLOWING IS CLEARLY MARKED ON EACH PAGE OF YOUR ANSWER SCRIPT:

- **NAME OF PAPER**
- **CANDIDATE LETTER**
- **QUESTION NUMBER**
- **PART NUMBER OF QUESTIONS (if applicable)**

QUESTION 1 (total 15 marks)

Discuss the effect that the loss of UK membership of the EU has had (and will have) on the Bailiwick, by reference to Guernsey's post-Brexit relationship with the EU and with the UK.

QUESTION 2 (total 15 marks)

Newly elected Deputy Le Colombe is concerned about the UK's apparent desire to legislate for Guernsey whenever it wants. He wants to make a rabble-rousing speech at the Chamber of Commerce on this topic, emphasising the need for Guernsey's consent in the process, but wants to make sure that he has at least some partial understanding of both sides of the argument. Deputy Le Colombe asks you to comment on the following points, mentioning examples of any relevant case law or legislation:

- 2.1 the constitutional basis on which the UK claims the right to legislate for Guernsey;
- 2.2 Guernsey's response to this claim;
- 2.3 the methods by which the UK can theoretically legislate for Guernsey;
- 2.4 anything inherent in these methods, or any measures taken by Guernsey, which restrict the right of the UK to do so.

QUESTION 3 (total 15 marks)

Mr Blofeld has asked your firm, Connery, Moore and Le Poidevin, for advice. He had been told by one of the officers of the States Development & Planning Authority that he did not need planning permission to hollow out an extinct volcano off the coast of Guernsey. Having undertaken the necessary work, the same officer has realised their mistake and issued the relevant notice requiring the works to be reversed. Having spent four months in a state of rage, Mr Blofeld has missed the deadline for appealing against that decision under the appropriate planning legislation.

Advise Mr Blofeld on:

- 3.1 the review process available under the Administrative Decisions (Review) (Guernsey) Law, 1986, as amended, including the composition of the body which would undertake the review and whether and how he could lodge an application;
- 3.2 the grounds and the procedure for bringing a judicial review and any human rights law based remedies;
- 3.3 the advantages and disadvantages of the two approaches set out above, including the remedies available.

NOTE: The aspirant is not expected to make any specific reference to relevant planning legislation or case-law, save insofar as such case-law might demonstrate principles of judicial review/HR compliance.

QUESTION 4 (total 12 marks)

Explain the following:

- 4.1 the relationship between the States of Deliberation and the States of Alderney;
- 4.2 the role of the Royal Court in respect of cases from both Alderney and Sark; and
- 4.3 the limits of the power of the Chief Pleas of Sark to legislate without Royal Sanction.

QUESTION 5 (total 13 marks)

5.1 Explain what is meant by the following:

5.1.1 the Grand Coutumier;

5.1.2 the Coutume Reformée;

5.1.3 the Extente and its significance;

5.1.4 the Quo Warranto proceedings.

5.2 '*Morton v Paint* is the most important single case from the perspective of the Bailiff's Paper in the Guernsey Bar Course.' Please indicate whether or not you agree with this statement and explain why.

QUESTION 6 (total 15 marks)

'Guernsey's political system has been the subject of almost continual change since the Harwood Report.'

- 6.1 Set out the most significant changes made since that report (the 2000 Harwood Committee Review into the Machinery of Government) to:
- (a) the electoral system; and
 - (b) the machinery of government.
- 6.2 Explain the advantages and disadvantages of the different machinery of government models proposed by the Harwood Report and the States Review Committee report in respect of the Organisation of States Affairs (2014); and
- 6.3 Analyse whether the changes in fact made reflected the proposals originally put forward.

QUESTION 7 (total 15 marks)

A junior lawyer, Basil Brash, has recently moved to Guernsey to work for your law firm, and has been looking at the Companies (Guernsey) Law, 2008 in respect of an application for the restoration of a company for a client. He reads section 371(1)(c): *'Before making an order for the restoration of a company, the Court shall give an opportunity to make representations to Her Majesty's Procureur and Her Majesty's Receiver-General'*.

He speaks to the Law Officers Chambers to ask if HM Procureur is available and is told she is on leave, but that HM Comptroller may be able to assist. Basil arranges to speak to HM Comptroller later, but in the meantime asks you whether he should insist on speaking to HM Procureur, although he notes from the interpretation section of the Law that *'Her Majesty's Procureur'* includes *'Her Majesty's Comptroller'*. He asks you if you are familiar with the Law Officers' functions and whether the posts of HM Procureur and HM Comptroller are different.

7.1 Set out briefly the key functions of HM Procureur, HM Comptroller and HM Receiver-General.

Basil then telephones the Greffe to arrange a hearing for the restoration, but is told that although under the Law, *"the Court' means the Royal Court sitting as an Ordinary Court'*, the matter is most likely to be dealt with *'on the papers'*. He asks you what the Ordinary Court is and how it is constituted.

7.2 Set out briefly all the divisions and functions of the Royal Court and their constitution and discuss briefly whether it is generally appropriate for matters to be dealt with *'on the papers'*.

Basil is so enthralled with your answer that he accidentally drops his copy of the Companies (Guernsey) Law, 2008, on the floor. When he picks it up, he notices that it has fallen open at section 427(7): *'For the purposes of this Part, the Court is constituted by the Bailiff sitting unaccompanied by the Jurats'*. Basil says that he has never heard of a 'Jurat' before, apart from hearing that a politician had once asked if they were from the Jurassic era.

7.3 Set out the functions of the Jurats and the process by which they are appointed.

END OF PAPER