

GUERNSEY BAR EXAMINATION

9.30 AM, 12 MAY 2021

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 Criminal Justice (Fraud Investigation) (Bailiwick of Guernsey) Law, 1991, as amended**
3. **The Criminal Justice (International Cooperation) (Bailiwick of Guernsey) Law, 2001, as amended**
4. **The Disclosure (Bailiwick of Guernsey) Law, 2007, as amended**
5. **The Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003, as amended**

6. **Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law – Extract Codes C and D**
7. **Regulation of Investigatory Powers Law (Bailiwick of Guernsey) Law, 2003, as amended**
8. **Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013, as amended**
9. **The Terrorism and Crime (Bailiwick of Guernsey) Law, 2002, as amended**
10. **The Cash Controls (Bailiwick of Guernsey) Law, 2007, as amended**
11. **The Forfeiture of Money in Civil Proceedings (Bailiwick of Guernsey) Law, 2007, as amended**

QUESTION 1 (total 25 marks)

Mrs Denise Hopper has been arrested by Guernsey Police on suspicion of robbery. You attend the police station to advise her.

The police provide written disclosure as follows:

'On the 26th March 2021 your client entered Boots pharmacy on the High Street and approached the pharmacist. She produced a knife from her coat and asked the pharmacist to 'hand over the benzo's' and so the pharmacist passed her 3 boxes of medication.

Denise has been identified by a witness 'A' who was in the shop. 'A' recognised Denise from a social media image on Denise's Facebook page which she looked at shortly after the offence. A further witness 'B,' who will not give a statement, named your client to witness 'A' causing her to check Facebook. A mobile phone has been recovered by Guernsey Police and we ask your client provides her passcode.'

Denise Hopper indicates she is not going to give the police anything and does not understand why she is being asked for the passcode for the phone as she says it is not hers.

- 1.1. Advise her if she has to provide her passcode, any defences available to her, and explain what may happen if she declines. **[5 marks]**

Your client is charged with robbery and you attend court the next day and to your surprise your bail application is successful. The prosecutor immediately indicates to the court she will appeal this decision.

- 1.2. You visit Denise in the cell area at court to tell her what is happening. Explain the process now the prosecution have appealed the granting of bail. **[3 marks]**

The case progresses to the Royal Court and you decide to challenge the admissibility of the identification evidence. The prosecution case papers do not contain the image witness 'A' saw on Facebook. The police did not seek to arrange any form of identification procedure.

- 1.3. Would witness 'A' be able to give evidence of what 'B' told her in naming your client **[2 marks]**

- 1.4. You decide to challenge the admissibility of the identification evidence given by witness 'A'. Explain in full how you do this. **[6 marks]**

Your client is convicted and sentenced and eventually admits her guilt in the social enquiry report. A week after her sentence her son David Hopper (aged 16) is arrested for handing stolen goods after the medication was found during a drugs search at his flat where he lives alone. You are called to the station to advise David. Assume there is no conflict of interest. An appropriate adult is present. Your client immediately indicates in consultation that he is guilty, that he knew his mum had robbed Boots, and he took receipt of the medication to try and help her out.

- 1.5 David says he just wants to get the case over as quickly as possible but asks what will happen next. Advise him of all possible outcomes in his case, including advising him of the next stages in the case, whether he will be bailed, and the range of sentences available to the court if he is convicted. **[9 marks]**

QUESTION 2 (total 25 marks)

In March 2021 Steve Salt set sail from France to Guernsey on his yacht the *'Serpent'*. At 8.30pm on 22nd March 2021, he sends a text to Colton Fortin and Tom Treport saying, *'Be in at 9.00. Will call you then. SS.'*

Steve Salt then sails his yacht into St Peter Port and ties up at the dock at around 9.00pm. At 9.05pm he sends a text to Colton Fortin alone saying, *'come and collect the gear SS.'*

Colton Fortin then forwards this second text to Tom Treport at 9.10pm. Fortin then sets off to the Blue Griffin pub where he is seen ordering a meal.

At 10.10pm Tom Treport arrives at the dockside where he is observed by a customs officer receiving a blue rucksack. The officer has a good view of the *Serpent's* deck where Steve Salt and Tom Treport are stood talking. Tom Treport walks back onto the dock just at the time that a large party is coming into the Yacht club. The officer loses Tom Treport in the crowd. At the same time the *Serpent* sails off with Steve Salt on board.

The next morning at 11.00am Tom Treport sends a text to Colton Fortin, *'I have it. TT.'*

Colton Fortin responds *'bring it now CF.'*

At 11.15am Tom Treport arrives at Colton Fortin's house and hands over a blue rucksack. The handover takes place on the doorstep. The customs officers then arrest both men and when the blue rucksack is examined it is found to contain 4,000 MDMA (ecstasy) tablets.

When questioned by Customs Officers, Tom Treport denies knowing Colin Fortin and denies being at the dock on the previous evening.

Colton Fortin asks you to act for him. He tells you that he had bought a blue rucksack online and that Tom Treport was simply delivering it to him and he had no idea that the rucksack contained drugs. He explained the rucksack was for coastal walking as he is a keen hiker. You advise him to answer questions when interviewed by the Customs Officers and he does. You are then told he will be charged and remanded in custody and you leave the station. Tom Treport is also charged and remanded in custody.

You attend court the following day and discover that, after you left the police station, Colton Fortin was called in for another *'final interview'*. Your client says he was not offered legal advice and was told by the customs officers it would be better for him if he just admitted it as they knew he was *'bang to rights'* and it would help him get bail.

He admitted in the interview he was aware the bag contained MDMA but now tells you this was not true and he did that because he was told he would get bail.

The case is adjourned and you receive the committal papers for the Royal Court with a joint charge against Colin Fortin and Tom Treport alleging they were jointly concerned in the fraudulent evasion of the prohibition on importation of MDMA (class A drug); contrary section 77 of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972.

- 2.1 Your client wants his wife to attend the committal. Explain the committal process to your client and whether there is anything you can do to stop the case at this stage **[3 marks]**

The case progresses to the Royal Court.

- 2.2 What arguments might you raise in relation to the admissibility of this confession? Set out the law and apply it and explain to your client the procedure. **[12 marks]**

Colton Fortin and Tom Treport are committed to the Royal Court. For the avoidance of doubt, it is the Crown's case that Steve Salt, although never charged, was a part of the importation operation.

The Law Officers seek to have all the text messages admitted into evidence:

- 2.3 On what basis, if any, can any of these texts be admitted, against whom and for what purpose? Give the authority and your (brief) reasons. **[7 marks]**
- 2.4 Despite your best efforts your client is convicted. Explain briefly what sentence your client is facing by reference to the applicable guidelines. **[3 marks]**

QUESTION 3 (total 25 marks)

You are acting for Dave Rogue, who was originally from Latvia, but who has worked in Guernsey for 8 years in a local restaurant. He is divorced but has a 3-year-old child and shares childcare with his ex-wife. He has been arrested for a rape that occurred in 2004. The victim was 20 years old at the time. Your client denies knowing the victim and says it never happened.

A search of the premises reveals that a smallish quantity of cannabis is being grown in an old outhouse. Your client says that he has leased the outhouse to someone that he met at the pub, whose name he cannot now remember.

3.1 When you receive the committal file it contains two counts, rape, cultivation of cannabis. Can these counts be joined on the same indictment? Explain your reasoning. **[6 marks]**

The prosecution file includes an Achieving Best Evidence (ABE) interview and when your client's case is committed to the Royal Court the prosecutor indicates that they will apply for special measures for the witness and for the admission of the ABE video interview by way of a recorded evidence direction.

3.2 Explain to your client what special measures could be sought in this case, what test applies to the application, and what objection you may make to the application. **[7 marks]**

3.3. The case proceeds to trial and your client indicates he wants to ask the victim about who else she was sleeping with at the time because he thinks she has become confused with who raped her. Advise your client whether it is likely you would be permitted to cross examine on this point and give reasons for your answer. **[2 marks]**

3.4. Your client is acquitted of rape. He asks whether his name and that of the victim will be reported in the media. Advise him. **[2 marks]**

3.5 Your client is convicted of the cultivation offence. Advise him whether he can face confiscation proceedings for this offence. **[2 marks]**

3.6. The prosecution serve the outline for sentence and you note that it includes reference to whether the Royal Court should consider making a recommendation for deportation. Advise your client fully as to the procedure, what factors the court will consider, whether the court is likely to make a recommendation and whether, if a recommendation is made, he can appeal, and if so how (refer to local case law as appropriate). **[6 marks]**

QUESTION 4 (total 25 marks)

Guernsey Services Limited (GSL), a trust and corporate services provider licensed by the Guernsey Financial Services Commission, has just appointed a new chief executive, Cathy Cautious. She has been reviewing client files and has concerns about one particular client, Guernsey Co (GC), a Guernsey company incorporated and administered by GSL.

According to the information held by GSI, the beneficial owner of GC is George Y, the younger brother of Maria Y, the former president of X Land. The Y family have humble origins and Maria rose to power as the representative of a factory workers' union. George and Maria are very close, and George has been employed as Maria's political agent ever since leaving school. Maria was voted out of office in 2008, and is an outspoken critic of the current government, particularly of its record on human rights. She has publicly stated that the only way to cure the current political instability in X Land is to re-elect her as president.

GC was incorporated in 2007. Its official documents state that its purpose is to manage investments. GC has a Guernsey bank account opened and administered by GSI. According to the due diligence carried out by GSL when the account was opened, the assets placed in the account came from investments. There is currently £27 million in the account. GSL staff members have enjoyed a cordial personal relationship with George Y over the years, as he often takes them out to lunch during his regular visits to Guernsey and sometimes also takes the opportunity to bring cash with him for them to pay into GC's account. He often jokes that bringing in cash is the best way to keep the government's nose out of his business. The relationship with GC has been very lucrative for GSL, as large fees have been generated due to the scale of activity on the account. Sometimes this has involved GSI authorising multiple transactions involving the same funds on the same day.

Cathy Cautious has reviewed the GC file following allegations in the press about links between the Y family and organised crime. There appears to be little or no information on the file about the source of the funds paid into the account, or the purpose of the transfers out of the accounts. She notes in particular that several payments have been made to an account in the name of "X Land Freed", which an internet search reveals to be an organisation with the stated objective of overthrowing the government of X Land by any means possible. Cathy Cautious has also found a file note made a couple of years ago by Larry Lazy, GSL's former chief executive. According to this note, some concern was expressed by a staff member about some of the dealings on the account being untoward, which led to consideration being given to reporting this to the authorities. Larry Lazy mentioned these matters to a junior colleague who was about to meet George Y for lunch, and when she returned from lunch, she stated that she had passed on Larry's concerns but George had reassured her that the transactions

were all legitimate. The note records that on the basis of that assurance, Larry Lazy did not consider it necessary to take any further action.

4.1 Identify the possible criminal offences disclosed by these facts. **[6 marks]**

A request subsequently comes in from George Y to transfer £5000 to an account in Jersey. He says that the matter is urgent and if the transfer is not made, he will lose a valuable business opportunity. Cathy Cautious asks you for legal advice as she wants to report this to the authorities but does not know who to whom she should make the report, and in addition she is worried about breaching client confidentiality. She has also heard that in some circumstances the authorities can consent to a transaction going ahead. She wants to know what the legal effect of this consent is, and whether there is any time limit on granting or withholding consent.

4.2 What do you advise Cathy Cautious on these points (including by reference to any relevant case law)? **[5 marks]**

The economic crime division of the Guernsey Border Agency (GBA) decides to carry out a criminal investigation into the activities of GSL. During the course of their investigation they discover that Larry Lazy, who has not worked since leaving GSL and has no other known source of income, has recently purchased a very large farmhouse in St Saviours and has over £2 million in his personal bank account. It also emerges that in the last 2 months, payments have been made into that account from an account at another Guernsey bank in the name of a company, Y Ltd. The GBA suspects that these payments are linked to George Y and that Larry Lazy has allowed George Y to use his personal bank account for illicit purposes.

4.3 What steps can the authorities take to identify the beneficial owner of the account in the name of Y Ltd? If there is insufficient evidence to bring criminal charges against Larry Lazy, are there any measures that can be taken in respect of his assets, and how would this differ from the asset recovery measures that would be available in a criminal investigation? **[6 marks]**

The authorities in X Land open a criminal investigation into the misappropriation of public funds, and have identified possible links to Maria and George Y. They now require assistance to obtain documentary evidence about GC and its Guernsey bank account for use in court proceedings in X Land.

4.4 Describe the process for requesting and providing this assistance, including the relevant Guernsey authority, the legal mechanism(s) available to obtain the evidence on behalf of X Land, and (assuming that all applicable statutory tests

are met), the factors that will affect whether or not the relevant Guernsey authority decides to assist the authorities in X Land. **[5 marks]**

The GSL/Larry Lazy case has now concluded, and the Guernsey authorities are preparing for a forthcoming evaluation of the jurisdiction's compliance with international standards in relation to money laundering and terrorist financing.

4.5 What is the name of the body that issues those standards? What is the name of the body that will conduct the evaluation of Guernsey? What is the relationship between the two bodies? **[3 marks]**

END OF PAPER