

GUERNSEY BAR EXAMINATION

2.00 PM, 16 MAY 2022

COMPULSORY PAPER TWO

PROFESSIONAL CONDUCT, ETHICS AND RELATED ISSUES

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 – 15 MARKS**
- **QUESTION 2 – 22 MARKS**
- **QUESTION 3 – 3 MARKS**
- **QUESTION 4 – 5 MARKS**
- **QUESTION 5 – 5 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 QUESTION (if applicable)**

MATERIAL PROVIDED:

1. **Oath, Articles and Rules of Professional Conduct of the Guernsey Advocate**

QUESTION 1 (total 15 marks)

In each of the three questions below you should answer on the basis that you are employed by Victor Hugo LLP.

Facts concerning Basil Martinga

The first matter that comes across your desk relates to Basil Martinga. Basil is looking to move from London to Guernsey. He intends the move to be a long term one. Basil will be selling his London home and the proceeds of sale will be remitted to Guernsey so that Basil can purchase a residence on the Island. Assume for this question that there are no issues in relation to the source of those funds and that you do take Basil on as a client.

More facts concerning Basil Martinga

You are now told by Basil that he is also selling his stake in a company called El banco del Imperio de Oriente y Occidente. The bank is a very small one. Originally based in Columbia, El banco established a base in Palermo, Sicily six months ago. Over the six months, the bank has made profits which seem out of all proportion to the size of its loan book. Basil will be selling his stake to local Sicilian entrepreneurs. The proceeds of sale will be coming through Penguin Bank (London) Plc, a very reputable London bank. Basil wishes you to draft the necessary documentation and to handle the proceeds of sale which he wishes to invest in property in Guernsey.

1.1 What steps ought Victor Hugo LLP to be taking in relation to Basil Martinga?

[5 marks]

More facts concerning Basil Martinga and Igneous Rock (Guernsey) Ltd

Notwithstanding any advice that you may have given you are now to assume Basil Martinga has successfully moved to Guernsey and that there are no legal or ethical concerns relating to him. Basil wishes to acquire a 66% shareholding in Igneous Rock (Guernsey) Ltd ('Igneous'). Basil wants the acquisition of Igneous to take place within a very short space of time and says he is happy to pay whatever it takes. You telephone Basil to talk to him about client care issues. He says he is too busy to talk about this.

1.2 What steps ought Victor Hugo LLP be taking at this point in relation to Basil Martinga?

[5 marks]

You are now to assume that Basil is to proceed with the acquisition of a controlling share in Igneous. This morning Basil has telephoned you to say that the remaining 34% of shares in Igneous are to be acquired by Roz Kelly. Basil would like Victor Hugo LLP to act for him and Roz Kelly at the same time. You mention this to a colleague who says that he didn't think that an Advocate could act for more than one side in a purchase.

- 1.3** Can Victor Hugo LLP act for Basil Martinga and Roz Kelly in this transaction? Explain your answer. **[5 marks]**

QUESTION 2 (total 22 marks)

Facts concerning Klara Baladis

The next file that you are given relates to Klara Baladis. She is looking to bring in excess of £5,000,000 into Guernsey with a view to investing it in a Guernsey-based hedge fund. Klara is the sister of the minister of finance in one of the Baltic states. She has been a successful entrepreneur in her own right having set up and run Balticpurity AS., a well-known cosmetics company which sells herb- and salt-based products. On the basis that Klara is a high-profile international business figure you are told that the firm would like to approach the take-on of Klara as a client with a 'very light touch'.

2.1 What steps ought Victor Hugo LLP to be taking in relation to Klara Baladis?

[5 marks]

More facts concerning Klara Baladis

Notwithstanding any previous advice that you may have given, you are now to assume that there are no outstanding legal or ethical issues concerning Klara Baladis. You are told that Klara wishes to bring proceedings for breach of contract against the Guernsey Wind Power Co ('GWPC') ('the breach claim'). The contract was entered four years ago, long before Victor Hugo LLP acted for Klara Baladis. At the relevant time, Victor Hugo LLP was acting for GWPC on various matters and thus built up a good knowledge of how GWPC operates on a day-to-day basis.

You are to assume that Victor Hugo LLP has no specific knowledge relating to the breach claim.

2.1 Can Victor Hugo act for Klara Baladis against its former client GWPC?

[8 marks]

More facts concerning Klara Baladis

Notwithstanding any previous advice that you may have given, you are now to assume that you are acting for Klara Baladis in her breach of contract claim against GWPC. As a result of an amendment to the pleadings, GWPC is now concerned that Victor Hugo LLP has knowledge arising from the matters where your firm had previously acted for the company. GWPC is concerned that information may 'leak' from the fee-earners who used to act for it to the fee earners acting for Klara Baladis. Those fee earners work in different departments. GWPC has now made an application to the court for an injunction preventing Victor Hugo LLP from continuing to act for Klara Baladis.

2.3 Under what duty is Victor Hugo LLP in these circumstances? Can GWPC prevent Victor Hugo LLP from acting for Klara Baladis? What approach is the court likely to take?

[9 marks]

QUESTION 3 (total 3 marks)

Facts concerning Peter Hernandez

Peter Hernandez has instructed Victor Hugo LLP in a dispute which has been dragging on for some time. Proceedings have yet to be issued. The dispute concerns access to land. Having looked at the papers, you have concluded that Peter's case is so weak that it is not even arguable. Peter says he has a right to a fair hearing and wishes you to commence proceedings on his behalf in the Royal Court.

- 3.1** Is there any issue arising which should be of concern to you? What should you do? **[3 marks]**

QUESTION 4 (total 5 marks)

Facts concerning Isobel Walker

You are acting for Isobel Walker. Isobel is 87 years old. She is residing in a care home – ‘Sunset Years’. Isobel has two children Jake Walker and Sally Green. Last year Victor Hugo LLP drew up Isobel’s will. That will made provision for Isobel’s sizeable estate to be divided as follows: one third to Jake Walker, one third to Sally Green and one third to the Guernsey Society for the Protection of Fish Stocks (a charity). When that will was drawn up it was possible for Isobel to come to Victor Hugo LLP’s office.

Yesterday, the same fee-earner, Carol Travers, who drew up the original will received a telephone call asking her to visit Isobel at Sunset Years. The visit went ahead and Carol returned to the office with instructions for a fresh will. Under the new will the entire estate would be left to Jake Walker. Carol mentioned to you that Jake was present in the room the whole time and was hogging the conversation to such an extent that Carol could barely get a word out of Isobel. Jake kept saying that Sally Green ‘had treated mum terribly’ and ‘mum is really upset.’

All this has left Carol feeling vaguely worried. She asks you for your point of view.

4.1 What advice would you give to Carol Travers?

[5 marks]

QUESTION 5 (total 5 marks)

Facts concerning the matter of the Reybold Trust (Guernsey)

Malcolm Reybold was an English industrialist who set up a trust in Guernsey during the 1990s. The trustee chosen was Michael Beugade. The Trust has generated significant legal work for your firm Victor Hugo LLP but the firm has been underbid by a rival firm, Renoirs Law LLP. Renoirs will be dealing with all of the Trust's new matters in future. You are aware that the fee-earner dealing with the Trust's non-contentious legal work, Andrew Cardin, is struggling to pick up other clients and that he is behind with his billing targets. Andrew has just started on his final piece of work for the Reybold Trust.

You are aware that Andrew Cardin bills by the hour.

- 5.1** What costs advice should Andrew Cardin have given the Reybold Trust at the outset of this last matter? **[5 marks]**

END OF PAPER