

**GUERNSEY BAR EXAMINATION**

**09:30AM, 16 MAY 2024**

**PAPER ONE**

**CIVIL PRACTICE AND PROCEDURES**

**THREE HOURS**

**CANDIDATES ARE REQUIRED TO ANSWER ALL QUESTIONS. THE MARKS AVAILABLE FOR EACH QUESTION ARE SHOWN BELOW.**

- QUESTION 1 – 20 MARKS
- QUESTION 2 – 10 MARKS
- QUESTION 3 – 15 MARKS
- QUESTION 4 – 15 MARKS
- QUESTION 5 – 20 MARKS
- QUESTION 6 – 10 MARKS
- QUESTION 7 – 10 MARKS

**MARKS WILL BE GIVEN FOR REFERENCES TO APPLICABLE LEGISLATION AND CASE LAW.**

**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)

**MATERIALS PROVIDED:**

1.	The Evidence in Civil Proceedings (Guernsey and Alderney) Rules, 2011
2.	The Royal Court Civil Rules, 2007

### Dramatis Personae

<b>The Rodin Institute SARL</b>	Centre for study of Rodin's work. Has three recently discovered Rodin Statuettes. The Institute is based in France.
<b>Renaissance de la Sculpture Ancienne (Guernsey) Limited</b>	Company specialising in cleaning and restoration of works of art.
<b>Le Nettoyeur</b>	Brand name of Renaissance's AI controlled cleaning robot.

### The Facts

The Rodin Institute SARL ("the Institute") is a centre for the study of the work of Auguste Rodin. It holds annual conferences to promote the knowledge of Rodin's sculpture. In 2021, the art world was astonished by the discovery of three stone Rodin statuettes that had been thought lost and destroyed during World War II. The statuettes were discovered in a previously unknown cellar at the Château de Chambord in the Loire Valley, France. In 2022, the Institute was given the three statuettes by the French State. The statuettes were thought to be unsuitable for display in a more prestigious institution as they had lain uncovered in cold and dirty conditions since the war. Were the statuettes to be cleaned and then preserved by hand using the techniques usually adopted by the Institute, the cost would have been prohibitive.

On 7<sup>th</sup> November 2022, Renaissance de la Sculpture Ancienne (Guernsey) Limited ("Renaissance") announced on its website that it had created the first robotic cleaner of historically important sculpture. The machine, called Le Nettoyeur, was said to mark a huge leap forward in the appliance of artificial intelligence to the cleaning of sculpture that was otherwise beyond cleaning by established methods. Renaissance said that this offered hope for the restoration of many ancient sculptures.

Le Nettoyeur was controlled by artificial intelligence which could control the scanning and 'reading' of an entire sculpture and then decide the best method of cleansing and preservation. The machine would select, mix and apply cleansing liquids which would work to remove the maximum of dirt with the minimal disturbance of the surface of the sculpture. The machine would execute the cleansing and

preservation of the sculpture using brushes that would be applied more delicately and consistently than could be achieved by a human being.

On 10<sup>th</sup> January 2023, Renaissance and the Institute entered into a contract whereby Renaissance would use Le Nettoyeur to clean and restore each of the Rodin statuettes. The Institute agreed to deliver the statuettes to Renaissance's premises and registered office at 66 Verlaine Street in St Peter Port, Guernsey.

Under the terms of the contract, the Institute was to provide Renaissance with a Certificate of Condition, which would set out all matters which Renaissance would need to take into account when cleaning the statuettes.

The contract was signed in Guernsey on 10<sup>th</sup> January 2023 and was governed by Guernsey law.

It was agreed that, upon completion of the cleaning operation, the Institute would pay Renaissance the sum of £125,000 per statuette.

The contract further provided that on delivery to it of the statuettes, Renaissance would examine the statuettes carefully; identify the challenges presented by each statuette; discuss the areas of risk and explain to the Institute whether Le Nettoyeur was recommended for the cleaning process before the AI led cleaning process commenced.

The Institute arranged for the launch of a new exhibition on 20<sup>th</sup> February 2023 at the commencement of the 2023 annual conference at the Institute. The exhibition featured the statuettes as the central focus and a gala dinner to raise funds for the Institute. The M.D. of Renaissance was invited to the gala dinner.

The statuettes were delivered to Renaissance's premises at 66 Verlaine Street on 7<sup>th</sup> February 2023. The Certificate of Condition disclosed no matters giving cause for concern.

The cleaning operation took place between 8<sup>th</sup> February 2023 and 10<sup>th</sup> February 2023. Le Nettoyeur was deployed on each statuette in turn. Unfortunately, the statuettes were left a bright shade of green. The Institute collected the statuettes on 15<sup>th</sup> February 2023. On 20<sup>th</sup> February 2023 the Institute's Curator concluded that the statuettes remained unsuitable for display and cancelled the exhibition.

The statuettes having been collected, Renaissance sought payment of the sum due, but the Institute refused to pay saying that Renaissance did not properly identify the

risks that Le Nettoyeur would damage the statuettes in this way. Renaissance's position is that under the contract payment was due on 15<sup>th</sup> February 2023 and that they had informed the Institute of the risks.

**QUESTION ONE**

You are to assume that you are an Advocate at Victor Hugo Advocates (Guernsey) LLP. You have been asked to advise Renaissance in its claim for payment of the contractual sum due. The contract provides that the place for payment under the contract is Guernsey.

**Question 1A**

**What advice would you give to your client concerning the costs of the proceedings and the question of costs generally?**

**Question 1B**

**Your client asks you whether the court can make you mediate. What do you advise?**

**Question 1C**

**Draft a Cause in respect of the proceedings brought by Renaissance against the Institute.**

**[END OF QUESTION ONE]**

**[TOTAL 20 MARKS]**

**QUESTION TWO****New Facts**

Proceedings have been issued. You are continuing to act on behalf of Renaissance against the Institute.

The Institute did not respond to the letter before claim which you sent on behalf of Renaissance. The only available address for service for the Institute is in Paris. You can assume that Renaissance's witnesses are in Guernsey, the Institute's witnesses are in Paris. The documentation is electronic and is stored on servers in Guernsey and France. The historical documentation from World War II has been digitised and is held on both parties' servers.

**Question 2A**

**What steps will Renaissance have to take to obtain leave to serve the Institute? Set out the relevant test and assess whether or not Renaissance will be able to satisfy it (you do not need to deal with method of service).**

**Question 2B**

**What can the Institute do in the Royal Court if it wishes to object to leave to serve out of the jurisdiction being given?**

**[END OF QUESTION TWO]**

**[Total 10 MARKS]**

### **QUESTION THREE**

#### **New Facts**

You continue to act on behalf of Renaissance in its claim against the Institute.

You are now to assume that the Institute defends and counterclaims upon the basis that Renaissance breached the terms of its contract. The particulars of breach are that the risks that Le Nettoyeur might damage the statuettes were not properly identified, that Le Nettoyeur's artificial intelligence misread the size and composition of the surface of the statuettes, failed to mix the cleaning solution correctly and applied brushes that moved too quickly and with too great a force. As a result, all of the dirt was removed from each statuette but the sculptures which should have been left the colour of soft sand, were left a vivid shade of green.

Renaissance responds to the defence and counterclaim with a *replique* and extensive *exceptions de forme* within its defences to the counterclaim.

#### **Question 3A**

**Advise Renaissance on the process of obtaining the answers to the exceptions?**

#### **New Facts**

You have listed Renaissance's case against the Institute for a case management conference. In preparing for that conference, you are discussing the trial with Renaissance. You tell your client that one of the questions that the court will expect you to have instructions on is the issue of Jurats at the trial.

#### **Question 3B**

**On what basis will a decision be made for Jurats to sit at trial and what outcome (if any) will this have on who will decide the matters which will be before the Court.**

#### **New Facts**

Because Le Nettoyeur is truly cutting-edge equipment and draws upon different design and manufacturing disciplines you have concluded that you will need three experts:

- (a) a computing expert who will be able to deal with whether the conclusions that Le Nettoyeur drew following its scan of each Rodin statuettes;
- (b) a mechanical engineer who will be able to deal with the distance from the Rodin statuettes at which Le Nettoyeur released cleaning and rinsing liquids, the period for which it sprayed those liquids and the pressure(s) at which the liquids were released; and
- (c) a chemistry expert with experience of statuette restoration who will be able to deal with the damage, if any, to the Rodin statuettes, what caused that damage and how any damage might be repaired.

In respect of the mechanical engineering expert, Renaissance wishes you to find an expert who will take its side and confine themselves to helpful facts.

The Institute has no objection to the principle of expert evidence in the areas you have suggested and also wants to have its own experts on the same issues.

### **Question 3C**

**If both parties agree, can you rely on these experts at trial? and what advice do you give your client in the context of the duties of an expert witness to the Court?**

### **New facts**

You have now received Renaissance's chemistry engineer's report. It has been provided by Professor Firmin. Based on extensive testing, your expert has concluded that the statuettes went green because the cleaning solution in which they were washed reacted with chemical residues which had formed upon the surface of each statuette. Those deposits came from the frequent flooding of the cellar at Château de Chambour. The existence of the deposits should have been but was not disclosed in the statement of condition.

Renaissance now wishes to amend its replique and its defences to the Counterclaim.

### **Question 3D**

**What test will be applied? What is the likely outcome of the application?**

**[END OF QUESTION THREE]**

**[TOTAL 15 MARKS]**

## **QUESTION FOUR**

### **New Facts**

You continue to act for Renaissance in its claim against the Institute.

Regardless of how you answered the last question you are now to assume that the repique and the defences to Counterclaim have been amended. The Institute is applying for summary judgment on its counterclaim and summary judgment and/or strike out of Renaissance's claim. The basis of the applications is that although Professor Firmin's report has identified one possible cause of the statuettes' new colour, it is equally possible that their condition was caused by the matters alleged in the Institute's Defence and Counterclaim. In the Institute's supporting affidavit for the applications, the Court is urged to grasp the nettle and thus to avoid the need for a trial. In its skeleton argument it says that Renaissance must show that it has a compelling defence to the counterclaim. The Institute says that Renaissance cannot demonstrate that it can meet this threshold.

### **Question 4A**

**Is the Institute correct in the position set out in its skeleton argument? Setting out the tests, show how they are applied in practice and indicate what you think will be the likely outcome of the summary judgment and strike out applications (answers can be in bullet form).**

### **New Facts**

Regardless of your advice on the previous question the Institute were unsuccessful in their applications, however information in the affidavits has given your client Renaissance cause for concern that the Institute may be in financial difficulty.

### **Question 4B**

**What advice do you give your client Renaissance on the grounds for obtaining security for costs against the Institute?**

**[END OF QUESTION FOUR]**

**[TOTAL 15 MARKS]**

## **QUESTION FIVE**

### **New Facts**

You continue to act for Renaissance in its claim against the Institute.

You have been tasked with dealing with disclosure of documents on behalf of Renaissance.

### **Question 5A**

**Set out the duties concerning disclosure that rest upon Renaissance.**

### **New Facts**

You are now to assume that Renaissance has the following documents:

- (i) Initial test specification stating,
 

*'the object of these tests is to make sure that Le Nettoyeur can be used safely on any suitable objet d'art including those made out of marble, soft stone or clay. One of the tests will establish whether Le Nettoyeur applies the correct brush pressure according to the material out of which the objet is made.'*
- (ii) Test report no. 1 showing,
 

*'Le Nettoyeur has some difficulty in discriminating between the different kinds of cleaning fluid that should be used. This very useful result has persuaded us to reset the artificial intelligence programme.'*
- (iii) Internal email from Renaissance CEO to its Chief Researcher stating that:
 

*'36 hours for the machine to clean a statue is completely unacceptable. We are not going to sell this machine only on quality, we are going to sell it on speed. From our perspective, the engagement of the AI servers for such a long period of time is commercially ruinous. We have to have the entire cleaning process completed within 2 hours. Make the adjustments necessary to get the job done more quickly. If you have to use a stronger cleaning solution to get the necessary speed then go right ahead.'*

- (iv) An email from the Chief Researcher at Renaissance to the CEO:

*'I've heard back from the Advocate at Victor Hugo Advocates and they have advised that we should settle for £50,000 for commercial reasons. She says regardless of whether we are right or wrong we will spend more than that in legal fees. What do you think?'*

- (v) An email from Renaissance's Chief Researcher to one of your Advocate colleagues at Victor Hugo and the Advocate's response:

*'Hi Dave*

*We are looking for some suppliers of cleaning chemicals for use on antiques. It's not our area so we could do with being pointed in the right direction. Have you any recommendations?*

*Yours'*

**And**

*'Hello Paulette*

*Not our area really but I am aware that Christmas Cleaning Chemicals is supposed to be the leading supplier in this area. I happened to read about Christmas Cleaning Chemicals in the Financial Times this weekend.*

*Hope that helps'*

- (vi) An email from Victor Hugo Advocates to the Advocates for Cubist Art Fund Plc ("Cubist"). Cubist is the claimant in another set of proceedings against Renaissance. Cubist says that Le Nettoyeur has damaged three clay statuettes by Picasso,

*'Without prejudice'*

*[Cubist v Renaissance]*

*'We should make clear that our client, Renaissance, does not accept that it is in breach of contract. Each statuette was made of clay. It is well known that clay and water do not mix. Your client was aware of this risk in*

*commissioning the cleaning of the statuettes. Further, any damage is merely temporary and cosmetic.'*

*Nevertheless, our client is prepared to offer the sum of £25,000 in full and final settlement of any and all claims by your client.'*

### **Question 5B**

**In respect of each of these documents, specify whether or not it is required to be disclosed and the basis for any disclosure or non-disclosure and why.**

### **New Facts**

You are now to assume that having served Renaissance's list of documents and provided documents for inspection, you have now received a request for specific disclosure of further documents. You are satisfied that, although these documents exist, they are not covered by the standard disclosure test.

### **Question 5C**

**Advise Renaissance concerning the test for specific disclosure, what the parties need to do and how the court approaches applications of this kind.**

### **New Facts**

You are now to suppose that an officer from Renaissance has provided an affidavit verifying the list of documents provided on disclosure. The Institute has made an application seeking to go behind the verifying affidavit and wants the Court to inspect the underlying documents to check that the documents listed in Schedule 2 of Renaissance's disclosure list as privileged have been correctly claimed.

### **Question 5D**

**Advise Renaissance on the approach that the Court will take to this application for it to inspect the underlying documents.**

**[END OF QUESTION 5 ]**

**[TOTAL 20 MARKS]**

**QUESTION SIX****New Facts**

You continue to act for Renaissance in its claim against the Institute.

You are to assume that you instructed Dr Gillaine Martinet of the University of Manchester as Renaissance's expert in mechanical engineering. The trial is due to start next week. You have now discovered that, due to a French traffic controller's strike, Dr Martinet will be unable to travel to Guernsey for the trial.

**Question 6A**

**What applications might you make to the Court (including supporting documentation) (you do not need to draft them) to deal with this issue?**

**New Facts**

Renaissance win their claim and are successful at defending the counterclaim. You need to advise Renaissance on costs.

**Question 6B**

**On what grounds might the Court award indemnity costs?**

**New Facts**

You make an application for indemnity costs but the Deputy Bailiff only awards your client recoverable costs.

**Question 6C**

**What steps can you take to appeal this costs decision?**

**[END OF QUESTION SIX]**

**[TOTAL 10 MARKS]**

**QUESTION SEVEN****Note**

You are now acting on behalf of Renaissance in various other matters which have nothing to do with Renaissance's claim against the Institute.

**New Facts**

Renaissance has obtained an undisputed judgment for £50,000. It is known that the judgment debtor has a bank account in Guernsey holding £35,000. The worry is that the judgment debtor will spend the account proceeds if no steps are taken.

**Question 7A**

**What steps should Renaissance take?**

**New Facts**

Renaissance has obtained a judgment for £150,000 against Olivia Boltinski. Olivia is the owner of a house near the airport. The house has no bonds or other charges secured against it. The house is worth £1,125,000. Olivia also has a yacht worth £10,000.

**Question 7B**

**What should Renaissance do in relation to each of Olivia's assets? Set out how the enforcement process will operate.**

**[END OF QUESTION SEVEN]**

**[TOTAL 10 MARKS]**

**END OF PAPER**