

GUERNSEY BAR EXAMINATION

9.30AM, 25 APRIL 2018

PAPER TWO

CRIMINAL PRACTICE AND PROCEDURE

THREE HOURS

CANDIDATES ARE REQUIRED TO ANSWER ALL QUESTIONS

THE MARKS AVAILABLE FOR EACH QUESTION ARE SHOWN BELOW. NOT 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 QUESTIONS (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 Co-operation) (Bailiwick of Guernsey) Law, 2001, as amended.
5. The Disclosure (Bailiwick of Guernsey) Law, 2007, as amended.

QUESTION 1 (25 marks)

1.1 A young man working in Sark recently appeared in the Royal Court to face two charges of burglary committed on that island. He pleaded guilty and received 18 months' imprisonment.

- (i) Describe the process taken to bring the case before the Royal Court; and
- (ii) Could any other court(s) have dealt with the matter? If so, what are the powers of such courts?

(5 marks)

1.2 What are the Prosecution's obligations of disclosure in a criminal trial before the Royal Court?

(5 marks)

1.3 Your client Hamilton operates a local building business. He comes to see you because he faces charges of fraud by false representation, the first hearing of which is due in the Magistrate's Court next week. He shows you the prosecution summary, which alleges that over the past 18 months, he has obtained building supplies and materials on credit from local trade suppliers, knowing full well that he would not be able to pay the invoices when they were presented. Many of these bills remain outstanding and his creditors have complained to the police. He explains to you that ordering materials on credit is common practice in the building trade and everybody does it. He tells you the business has a temporary cash flow problem and that if he could just start the job in his order book, he is confident that he would be able to pay the bills.

What do you advise your client to do, and explain to him what will happen at court?

(5 marks)

1.4 Following your excellent representation, Hamilton is acquitted of all charges but the Prosecutor immediately indicates that he will appeal. Your client is in shock and wants to know if the Prosecution can do this, what will happen if they do and what could happen if the appeal is successful.

Advise your client on the procedure and consequences of a prosecution appeal.

(5 marks)

- 1.5 Your client then learns that one of his creditors is disgusted at the acquittal and he has received a letter from them indicating that they intend to start a private prosecution. They say they have instructed their lawyers to commence fresh proceedings in Guernsey Magistrate's Court.

What do you advise Hamilton? Deal with his options if he is told he must attend the Magistrate's Court for the matter to be heard.

(5 marks)

QUESTION 2 (25 marks)

- 2.1 Lucas (age 18) pleaded guilty and was sentenced six weeks ago in the Guernsey Magistrate's Court for an offence of theft of a turkey torpedo roll, a chocolate bar and a soft drink worth £4.99 in total. He received a Community Service Order of 40 hours, as a direct alternative to 7 days youth detention. He comes to see you to ask if there is any way he can appeal his sentence, as he is finding it difficult to fit the work required by the court order around his job and his busy social life. He tells you that although he has been jointly referred to the Children's Convenor on several occasions for similar types of offences, he has only ever appeared in court once before, when the matter was remitted by the Judge to the Children and Young Person's Tribunal.

What do you advise him?

(5 marks)

- 2.2 What is a Suspended Sentence Supervision Order? What terms can be imposed and what are the consequences of breaching the order by:

- (i) Re-offending; and
- (ii) Not complying with Supervision?

How does it differ in these respects from a Probation Order?

(5 marks)

- 2.3 You act for Frances, who has been charged with assaulting her boyfriend's ex-partner at a party. She has been charged with an offence of causing grievous bodily harm with intent and the injuries comprise a broken nose and three teeth knocked out. Her plea is uncertain. At the first remand hearing, the Prosecuting Advocate opposes bail on the grounds of the likely penalty upon conviction, the strength of the evidence and, in the circumstances, a risk of further offending.

- (i) How do you deal with these objections?

(2 marks)

The case is committed to the Royal Court and Frances pleads not guilty. The matter is listed for trial. She tells you that her boyfriend witnessed the incident but has not made a statement to the police. However, he is most reluctant to attend court to give evidence on her behalf. He has told her that his employer would not give him the time off to go to court, and he suffers from panic attacks when speaking in public.

- (ii) Advise your client what steps you could take to ensure that the witness attends court. Explain what applications you would make, and the criteria the court would apply in determining the matter.

(2 marks)

After a contested trial, Frances is unanimously convicted and you again need to address the question of bail, which she has previously complied with.

- (iii) What approach do you take at this stage? What principles apply?

(2 marks)

- 2.4 In what circumstances would you advise a client charged with a purely indictable offence (such as robbery) to require an “old style” committal? What procedure would be followed and what test would the Magistrate’s Court apply in reaching its decision?

(4 marks)

- 2.5 You are representing Dobbs in a contested trial in the Magistrate’s Court. Dobbs is a seasoned defendant and has been charged with criminal damage to vehicles parked in the Odeon car park in St Peter Port. Upon his arrest, he was interviewed at the police station but considerably decided not to call upon the duty Advocate because it was late at night. When you check the transcript, you see that he was properly cautioned at the start of the interview in accordance with the PPACE Codes of Practice. He gives no comment answers to all the questions asked of him. After about twenty minutes, Dobbs asks for a break and the tapes are stopped. When the interview resumes, the interviewing officer introduces those present in the room but forgets to remind Dobbs that he is still under caution. Unexpectedly, Dobbs has an attack of conscience, and admits the offences. Apart from the interview, there is very little prosecution evidence against him.

What are your options? What criteria would the court apply to any application that you may make, and would it make any difference to your approach if Dobbs told you he had caused the damage?

(5 marks)

QUESTION 3 (25 marks)

Your client Dave Le Norm is due before the Royal Court charged with 10 counts of indecent assault on two females. Count 1-5 relate to allegations against a child (Ms X) who is 8 years old and counts 6-10 relate to alleged indecent assaults on a local girl (Ms Y) who was 15 at the time. The offences upon Ms X allegedly took place whilst your client was working for a charity in West Africa in 2017. All of the charges relate to your client allegedly touching the complainants in an intimate area whilst wearing a rubber glove. The Prosecution say that they intend to try all matters in the same hearing and that they will be seeking a recorded evidence direction in relation to the evidence of both complainants. When reading through the transcript of Ms X's evidence, which the prosecution have included in the trial bundle of agreed documents to go before the Jurats, you note the following exchanges near the beginning of the ABE recording.

Officer: *Right, now let's get on with this. Shall we talk about when he touched you?*

Ms X: *OK*

Officer: *He was wearing a glove?*

Ms X: *Yes he was and it was nasty.*

The prosecutor contacts you to indicate that they intend to use an intermediary at the trial when Ms X gives evidence. They have also said the case will be listed for a Ground Rules Hearing and special measures directions.

Your client vigorously denies all the charges. He doesn't understand how he can be prosecuted in the Royal Court for something that took place in West Africa. He says that the complainants must be confused or making things up. In particular he tells you that Ms Y has had many boyfriends and it was common gossip that she stayed out at night drinking and went to a lot of parties.

- 3.1 Explain to Dave Le Norm what the orders are that the prosecution are seeking, and what factors the Judge will consider when deciding whether to make the directions sought.

(6 marks)

- 3.2 Advise your client on whether any challenges can be made in relation to the procedures for the trial that the prosecution are proposing, and when these can be made. Refer to any case-law that you consider may assist your arguments.

(6 marks)

3.3 How do you plan to approach the cross examination of the complainants?

(4 marks)

The trial proceeds and your client is convicted. The Prosecution then mention another Indictment comprising four counts of making indecent images of children, by downloading them from pornographic sites and placing them in a file on his computer. There are 450 images across in all categories. Dave Le Norm intends to plead 'guilty' to all of these charges and has one similar conviction 3 years earlier for which he received 12 months' imprisonment.

3.4 What are the broad applicable sentencing guidelines and principles in Guernsey?

(4 marks)

For sentencing a Social Enquiry Report has been ordered. The Probation Officer recommends an Extended Sentence and a Sexual Offences Notification Order, for 5 years and 15 years' respectively. One of the conditions proposed for the Extended Sentence Order is that he is not allowed access to the Internet or any computer. Your client is upset about the proposed condition and wants you to challenge this.

3.5 Explain to Dave Le Norm what the orders that Probation propose mean and advise him in relation to the suggested condition.

(5 marks)

QUESTION 4 (25 Marks)

You are the in-house counsel for ABC Private Bank, which provides financial and fiduciary services for many international clients, few of whom reside in or visit Guernsey.

In February 2013 the bank was approached by Mr Boris Karlov, a Russian national, who wished to make an initial deposit of £13.5m through his technology company, Amphari, a BVI registered company which internet research indicates deals with 'commodities'. Mr Karlov explained that he was the sole Director of the company and that he was the ultimate beneficial owner. As part of the account opening he submitted certified copies of his passport, a utility bill for an address in West London, and he indicated that the account was likely to receive approximately £500,000 per month from a variety of different international bank accounts. He explained his source of wealth was from family inheritance although until recently he had been the Russian Interior Minister for State Nationalisation.

4.1 What issues should the bank consider when taking on Mr Karlov as a client?

(4 marks)

ABC Bank subsequently open an account for Mr Karlov. Following a review of Mr Karlov's account by a newly appointed Money Laundering reporting officer (MLRO) in April 2014, the MLRO notices that since the initial deposit in February 2013, there have been no subsequent credits to the account. However, there have been regular transfers in the region of £300,000 per month to a bank account based in London in the name of the wife of Mr Karlov, a Mrs Yelena Karlov. The MLRO also notices that the locally-based client wealth manager, Damien Ozanne, appears to have all the day to day dealings with the Karlov account.

In addition, there is a note on the file that in February 2014 a 'World Check' report had highlighted that in January 2014 the Russian authorities were about to indict a number of former government officials, including the former Interior Minister Boris Karlov. The allegations related to the improper sale of mining and oil concessions, with Mr Karlov and other close members of his family implicated as substantial beneficiaries. The report indicates that Mr Karlov was thought to be residing with his wife and family in London or possibly Bahrain. His wife Yelena Karlov was named as a 'person of interest' to the Russian authorities at this stage.

4.2 Would you advise the MLRO to do anything at this stage? Explain your reasons.

(3 marks)

On 30 June 2014 a decision is taken by the MLRO on behalf of the Bank that they should exit the relationship with Mr Karlov on a simple 'risk based approach'. The MLRO discloses to the Financial Intelligence Service (FIS) that they have concerns about the source of the funds in the light of the World Check report. This is disclosed via a formal disclosure. The FIS respond that if they wish to exit the relationship that is a business decision for the Bank. However, they remind the Bank that they will need to keep all the money laundering regulations in mind and no consent is given for any onward transfer of the funds at this stage.

The ABC Bank notifies Mr Karlov that the account will be closed, citing a strategic re-alignment of their global business. Shortly thereafter, Mr Karlov sends an e-mail directing that the entirety of the remaining funds should be transferred to Yelena Karlov's account in London. When this has not happened within one week of his instructions, the Bank receives a formal letter from a firm of London solicitors demanding an explanation why the transfer to Mrs Karlov has not been made.

4.3 How would you advise the MLRO to proceed?

(4 marks)

A criminal investigation is commenced by Guernsey Law Enforcement into the activities of ABC Private Bank and their employees. This follows intelligence reports that Mr Karlov spends regular holidays on his Superyacht 'The Cristobel II' with his client wealth manager, Damien Ozanne. The latter earns a modest sum from his employment at the ABC Bank, plus commission on various financial products, but he appears to have a lifestyle far in excess of his declared salary. He owns, apparently unencumbered, a large open market property worth £5.2 million in St Martins. He is known to drive a Ferrari with a distinctive two figure number plate, and has a high powered RIB at his disposal. Unverified intelligence reports suggest that Mr Ozanne has received substantial payments from a Swiss company believed to be linked with Yelena Karlov.

4.4 What steps could the law enforcement agencies take to ascertain the extent of Damien Ozanne's involvement with Mr Karlov and to verify the origins of Damien Ozanne's assets?

(4 marks)

4.5 What do you anticipate the prosecuting authorities will do to prevent Damien Ozanne from disposing of his house and other assets and how will this be achieved?

(4 marks)

Damien Ozanne is subsequently prosecuted and convicted of 7 counts of facilitating the money laundering of the proceeds of Mr and Mrs Karlov's embezzlement of Russian state monies. The prosecution put the case on the basis that he personally transferred approximately a total of £4.8m on the instructions of Mr Karlov, as well as receiving £100,000 in payments from Yelena Karlov through the Swiss company. A confiscation hearing is listed for 3 months following Ozanne's conviction and in the prosecution statement it is asserted that the defendant has benefited by a sum in excess of £5m, despite the charges only proving that he personally received around £100,000 in transfers directly from Mrs Karlov.

- 4.6 Can the prosecution obtain an order for the full £5 million and on what basis? Could it be contested? Mention any Guernsey and/or UK authorities that you consider support your argument if you wish.

(6 marks)

END OF PAPER