

GUERNSEY BAR EXAMINATION**THURSDAY 23 MAY 2024, 11:00am****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 – [15] MARKS
- QUESTION 3 – [10] MARKS
- QUESTION 4 – [10] MARKS

TOTAL 50 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 ONE

The facts

Your firm Victor Hugo LLP is acting for Mr Jonathan Sandri on the purchase of property in Guernsey worth £2,500,000. Mr Sandri has money coming in by transfer from Penguin Bank (London) PLC. Completion is expected on a Thursday. Mr Sandri lives in London.

At the last moment, Victor Hugo has been told that the money which was due to come from London is no longer available. The purchase money is now to come from the sale of Bitcoin in the Marshall Islands. The Bitcoin is apparently owned by a Mr Jonathan Dias. The sale of the Bitcoin will take place on a Monday. The next day, the money is to be paid into a Cayman Islands Bank account in the name of Mr Jonathan Perez. From there, the same day, the money will be transferred through an account in Venezuela in the name of Mr Jonathan Cabral. The money will then be deposited in Victor Hugo's client account where it is to be held on behalf of Mr Sandri.

You have only just become involved in this matter. On checking the file, you find that the only reference is to payment coming in from London. There is no reference to property of any kind situated in other jurisdictions.

Question 1A

What ought to be done? Explain your reasons.

[5 marks]

New facts

You are now to assume that all necessary steps have been taken and that matters are presently on hold. As far as Mr Sandri is concerned, the matter is ready to complete. Your senior partner has received an angry phone call from Mr Sandri demanding to know the cause of the delay.

Question 1B

What should Mr Sandri be told? What are the potential consequences that might flow from the wrong thing being said?

[5 marks]

New facts

You can now assume that you have a new client Sandra Wilson. She has approached Victor Hugo LLP concerning the purchase of a property in Guernsey. Sandra Wilson lives in London. From a telephone call it is clear that the client is a partner in a well known London firm of accountants.

In addition to the matters mentioned above, you have discovered that until 6 months ago Sandra Wilson's mother, Joanne Wilson, was the Minister for International Finance of the Marshall Islands. Joanne Wilson has a very good reputation for her anti-corruption stance. On the face of it, therefore, there would appear no reason to be concerned.

Question 1C

What ought to be done before proceeding with the transaction? Explain your reasons.

[5 marks]

END OF QUESTION ONE

[TOTAL 15 MARKS]

QUESTION TWO**The facts**

Kerstin Borg and Livia Huber are the directors and sole shareholders of Guernsey Aero Services Ltd ('GASL'). Borg and Huber's shareholding is held in equal portions. They have approached Victor Hugo LLP to see if it will act for them on the sale of the company. GASL is to be sold to Mr Andre Dumont for the sum of £2,000,000.

You understand that Kerstin Borg expects the proceeds of sale to be split 55/45 in her favour. Livia Huber on the other hand expects a 50/50 split. Huber is seeking to retain her director status with GASL. In return for this, Andre Dumont expects the sale price to be reduced by £20,000.

Question 2A

What issue arises and what should Victor Hugo do?

[7 marks]

New facts

You are now to assume that, instead of the facts set out above, Mr Kerstin Borg and Livia Huber are selling jointly owned land in Guernsey. The land is to be sold to Andre Dumont.

Victor Hugo LLP is to act for both sellers. In addition, Victor Hugo has been asked to act for the buyer Mr Dumont.

Question 2B

What issue arises and what should Victor Hugo do?

[8 marks]

END OF QUESTION TWO

[TOTAL 15 marks]

QUESTION THREE

Facts

Victor Hugo LLP is acting for Ray Schmid (in a contentious matter) who wishes to bring a claim against his neighbour Donna Martion. The claim arises out of a dispute concerning the boundary between no. 5 and no. 6 Nelson Close, St Peter Port.

Mr Schmid claims that 6 months ago, whilst he was off-island, Donna Martion's builders took down and moved the boundary wall between no. 5 and no. 6. He says that the wall now encroaches on his garden by about 8 inches along its entire length and he has compelling evidence in the form of 'before' and 'after' photographs and some CCTV footage.

You have been instructed to advise on the merits and then to issue the Summons and Cause.

Question 3A

What matters was Victor Hugo required to set out in its initial client care letter to Ray Schmid? You do not need to deal with costs issues. [4 marks]

More facts

You have considered the relevant conveyancing documentation and in this case the registered plan. You are satisfied that it is very clear where the boundary wall ought to be.

You have a photograph ('photograph 1') taken before the boundary is alleged to have been moved. Photograph 1 shows the boundary wall running exactly where you would expect it to be.

You have another photograph ('photograph 2') taken after the boundary is alleged to have been moved. Photograph 2 appears to show the boundary wall running exactly in the same place as it is shown in photograph 1.

Finally, Ray Schmid has given you CCTV footage taken on the day that boundary was allegedly moved. He says that the footage shows workmen onsite and at work. You examine the CCTV footage. It shows the boundary wall where you would expect it to be. The CCTV also shows Donna Martion's children playing in her garden. There are no builders to be seen.

Ray Schmid now wishes Victor Hugo to issue proceedings on his behalf against Donna Martion.

Question 3B

What issue arises and what should Victor Hugo do? Set out your reasoning. [4 marks]

New facts

You are now to assume that, in response to what you have said, Ray Schmid has indicated that he wishes to complain about Victor Hugo's service.

Question 3C

To whom should the complaint be directed? How long does Ray Schmid have to file the complaint? [2 marks]

END OF QUESTION THREE

[TOTAL 10 MARKS]

QUESTION FOUR

The facts

Victor Hugo LLP had previously acted for Ray Schmid in his dispute with Donna Martion over the boundary between their respective properties. You are now to assume that this dispute has been resolved amicably and the complaint withdrawn.

Ray Schmid is now selling his property to Eva Nilsson.

Mr Schmid is using another Guernsey Advocate – Alice Lorraine of Alice Lorraine LLP ('Lorraine') to act on the sale. Through Lorraine, Mr Schmid has made clear to you that he does not want Victor Hugo to provide any assistance to Eva Nilsson or her representative. Mr Schmid's approach to his sale does not surprise you given his previous behaviour.

Eva Nilsson's, Advocates Christopher Goodman (Guernsey) LLP ('Goodman'), have written to Victor Hugo directly. Goodman have asked for copies of documents relating to title dispute. Further, Goodman says that, as Victor Hugo is no longer acting for Mr Schmid, it is released from any continuing obligation towards him and can provide the documents to Goodman.

Alternatively, Goodman says that in providing the relevant documents Victor Hugo will be assisting Mr Schmid to sell his property and hence will be acting in his best interests.

Question 4A

What issue arises and what should Victor Hugo do? Set out your reasoning.
[4 marks]

New facts

Victor Hugo is now acting for Norman Property Holdings (Guernsey) Ltd ('Norman') which is in a dispute with its tenant Browleigh Pubs (Guernsey) Ltd ('Browleigh'). Norman is seeking to regain possession of the Anchorite Arms in St Peter Port from Browleigh.

In researching the case, you have discovered high persuasive authority which would render it unlikely that Norman would gain immediate possession. Norman has forbidden you to raise the authority in court.

Question 4B

What is your duty to the Court in these circumstances. [3 marks]

Question 4C

Can Norman compel Victor Hugo to act in accordance with its instructions?
[3 marks]

END OF QUESTION 4

[TOTAL 10 MARKS]

END OF QUESTION PAPER.