

GUERNSEY BAR EXAMINATION

09:30AM, TUESDAY 21 May 2024

PAPER TWO

CRIMINAL PRACTICE AND PROCEDURE

THREE HOURS

CANDIDATES ARE REQUIRED TO ANSWER ALL QUESTIONS

THE MARKS AVAILABLE FOR EACH QUESTION ARE SHOWN BELOW

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)**

Question 1 [total 25 marks]

Please note that the facts are set out in five parts with questions asked after each section, so you are advised to read the question in full before commencing your answer.

Facts – Part One

You act for A who has been charged to make a first appearance before the Ordinary Court. A was the director of Alderney Tidal Power Limited, resident in Alderney at the time he is alleged to have committed the offences (but who now lives in Guernsey). He is charged with fraud by abuse of position under section 4 of the Fraud (Bailiwick of Guernsey) Law, 2009. The allegation is that he has used the company credit for his own benefit to pay for holidays and other luxuries and it is alleged he has wrongly gained £50,000. A attends your office for advice.

Question 1(a) - A says he was told by the police the case will go to the Royal Court. A asks you why his case is in the Ordinary Court for his first appearance and why it will be dealt with in the Royal Court (the Full Court). Advise A, and in particular how his case would progress to the Royal Court (the Full Court). [4 marks]

Facts – Part Two

A explains that about a week ago the HM Sheriff came to his office and served him with a Restraint Order issued by the Royal Court under section 25 of The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999. This order is attached in your provided materials.

Question 1(b)

A asks you to explain what the order is, what happens if he breaches it, why the court has granted it without allowing him to appear at the time the application was made, what the court had to be satisfied of before the order was granted, and what action he might be able to take to vary the order. Advise him. [7 marks]

Facts – Part Three

A is due to appear before a Plea and Directions Hearing (PDH) in the Royal Court and he asks you to advise him what the prosecution has to prove for the offences of fraud by abuse of position. He also asks what happens at a PDH hearing.

Question 1(c) - Explain the elements of the offence to A and answer his query about what happens at the PDH. [4 marks]

Facts – Part Four

On your advice A pleads guilty at the PDH and the case is adjourned for sentence.

Question 1(d) - Explain to A what happens next and advise him on the sentencing options available to the Royal Court for this offence, including what period of imprisonment he could face by reference to any relevant Guernsey case law.

[5 marks]

Facts – Part Five

Ahead of sentence the prosecutor indicates they will seek an order under section 12 of The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999. They explain that they will also be seeking a confiscation order in respect of the £50,000 your client has in his HSBC bank account.

Question 1(e) – Advise A whether he can object to the section 12 application, what will happen if it is granted and what could happen if A does not comply with the order.

[3 marks]

Facts – Part Six

A confiscation order is made as sought by the prosecution. A instructs you to appeal the confiscation order.

Question 1(f) – Advise A if he can appeal the confiscation order.

[2 marks]

Question 2 [total 25 marks]

Please note that the facts are set out in six parts with questions asked after each section, so you are advised to read the question in full before commencing your answer.

Facts – Part One

You are the Duty Advocate on Christmas Eve 2023, and you receive a call from the police station in the middle of the night to tell you a 17 year old male, Peter Falla, has been arrested for burglary. The police decline to give you any further information over the telephone as to the circumstances of the arrest but allow you to speak directly to Peter.

Peter tells you he has never been arrested before and is clearly very distressed. You ascertain Peter's date of birth is 2nd February 2006.

After your initial conversation with Peter, with his permission, you speak to his father, Robert Falla. Robert keeps telling you "there's no evidence" against his son, that he wants you to secure Peter's release as soon as possible, and that he will see you at the police station as he wants to be with his son "every step of the way".

When officers are ready to interview Peter, you attend at the police station in person and are given the following disclosure: Peter was seen by a witness, Miss Flood, from a neighbouring property to enter the back garden of Mr Parry's house, go into the garden shed and remove several small tools and a garden strimmer. Mr Parry lives alone and was asleep in an upstairs bedroom and knew nothing of what had happened before the police informed him. The police are sure they have the right person as the witness recalled the male wearing a distinctive baseball cap. Miss Flood has given a full statement, saying "I'd 100% recognise the male again". Peter was arrested in a street close by to Mr Parry's address, wearing a Santa hat. He had a small garden trowel in his pocket. You ask for some time to consult with your client before the police interview him. Peter tells you he had nothing to do with the burglary and that he was "in the wrong place at the wrong time".

Question 2(a)

Advise Peter on the strength of the evidence as you know it to be so far, and address whether a garden shed can be burgled. **[3 marks]**

Question 2(b)

Advise Peter as to his choices as to how to deal with the interview, and the possible consequences for each option. **[2 marks]**

Facts - Part Two

The first interview is over quickly, and no evidence not already disclosed is revealed. The officer in the case tells you "enquiries are on-going" and they plan to keep Peter detained at the police station.

Question 2(c)

What advice do you give Peter about how long he can be detained without charge? **[1 mark]**

Facts – Part Three

The police advise you that it is their intention to release Peter on bail, pending further enquiries. Robert congratulates you for doing a fine job in “clearing up this nasty business”, and comments “let that be an end to it”. You tell your client and his father that the matter is not concluded and that the police intend to carry out further investigations.

The following day, you receive a call from the officer in the case to advise you he has arranged for Miss Flood to attend at the police station to participate in a video identification procedure.

Question 2(d)

What advice do you give to your client as to whether he should consent to have his image taken to form part of the video identification? **[3 marks]**

Facts – Part Four

Peter is charged with the offence of burglary, after Miss Flood makes a positive identification of him and Mr Parry identifies the trowel in Peter’s possession as being one of his very favourite gardening tools, inscribed with his initials. Peter is charged on 23rd January 2024 and bailed to appear before the court on 6th February 2024.

Question 2(e)

Which court will Peter appear before, for his first court appearance in this matter? **[1 mark]**

Question 2(f)

Explain to Peter the process of “joint referral” which must have taken place, before he was charged, with reference to the roles of:

- i. the designated officer
- ii. The Children’s Convenor
- iii. a prosecuting lawyer, working under the designated powers to His Majesty’s Procureur **[2 marks]**

Question 2(g)

Explain to Robert whether he can be Peter’s appropriate adult in court. **[1 mark]**

Facts – Part Five

At Peter’s court appearance on 6th February 2024, the prosecutor tells you this is “a very serious matter”, as offences of this nature are so rare in Guernsey, and people should “be able to leave their doors unlocked without little yobs breaking in”.

Question 2(h)

With reference to the maximum sentence an offence of burglary can attract, describe the procedure for deciding the venue for hearing the matter. What say, if any, does Peter have in where his matter is heard? Also explain to Peter the differences between the Magistrate’s Court and the Royal Court, in terms of who will decide whether he is guilty or innocent. Which court would you advise Peter has his matter heard before? **[8 marks]**

Facts – Part Six

The case proceeds to the Royal Court. The Prosecution intend to call Miss Flood as a prosecution witness, but she tells the officer in the case she is very nervous about giving evidence and she does not think she'll be able to stand up in court and do it.

Question 2(i)

What application might the Prosecution make in these circumstances and what is the test for the court to apply in considering it? What form should the application take?

[4 marks]

Question 3 [total 25 marks]

Please note that the facts are set out in three parts with questions asked after each section, so you are advised to read the question in full before commencing your answer.

Facts – Part One

Mr and Mrs Le Page have three children, Sally aged 16 years, Billy aged 15 and Amanda aged 12 years.

The defendant, Alf Williams aged 23 years, is Mrs Le Page's nephew and the children's cousin.

In 2023, when Sally was 15, Alf started cuddling her and kissing her on the face and lips. He started touching her breasts over her clothing. This was all with her consent.

Shortly after Sally's sixteenth birthday he started regularly kissing her and touching her breasts. This behaviour was with Sally's consent. On one occasion, he digitally penetrated her vagina. He did not ask her if he could do that, and Sally did not say that he could.

On another occasion, Sally was out of the house and the younger children were upstairs. Alf was openly masturbating when Amanda came into the living room and saw him. Alf saw Amanda and asked her to touch his penis, which she did. Alf then ejaculated. He then told Amanda to go to bed.

On a later occasion when Sally was out Alf openly masturbated in the living room. Billy came into the room. Alf saw him and said: "Watch this". He continued to masturbate for a few moments then ejaculated.

Two weeks later Alf was again babysitting. Billy was in bed and Sally was out. Alf and Amanda were sitting on the sofa watching the television. He put his arm around her and started stroking her neck and breast. Nothing was said.

Sally, Billy and Amanda have told their parents and police what has happened. Alf replied "no comment" to all questions put in interview.

Question 3(a)

Explaining your reasoning, what, if any, charges would you consider under The Sexual Offences (Bailiwick of Guernsey) Law, 2020:

- a) With regard to Sally?
- b) With regard to Billy?
- c) With regard to Amanda?

[10 marks]

Facts – Part Two

Alf is charged with offences, and he intends to contest all the charges.

Question 3(b)

When is the first time that Alf is required to provide details of his defence and any defence witnesses by way of a defence case statement? If he chooses not to, what

might the consequences be? What information should a defence case statement contain? **[5 marks]**

Facts – Part Three

Alf was convicted after trial before the Royal Court of various sexual offences against Sally, Billy and Amanda. He remains subject to conditional bail, as he has been throughout the proceedings, with a date for sentence in three weeks' time and you meet with him after the verdicts have been delivered. He asks you the following questions. What advice do you give him?

Question 3(c)

Alf wants to know if he can appeal his convictions, which he feels have been very unfair and that the witnesses lied. You also advise him you believe the Judge got a point of law wrong in the summing up. What do you advise him about the procedure for appeal and the timing in which to do so? What do you advise him the powers of the Court of Appeal are? **[4 marks]**

Question 3(d)

Alf asks you why the Judge told him he was "subject to notification" and what this means? Will it have any effect on him before his sentencing date? **[1 mark]**

Question 3(e)

After the sentencing hearing, the prosecutor advises you that she thinks the sentence Alf received was far too low for his offending. What, if any, powers do you advise Alf the prosecution has to appeal against sentence and what test will the court apply? **[3 marks]**

Question 3(f)

Alf is unsuccessful at appealing against his convictions and Alf contacts you 10 years after his convictions and tells you he is intending to write a book, "exposing all the lies" Sally, Billy and Amanda told about him, and that he wants to "name and shame" them. What do you advise him? **[2 marks]**

Question 4 [25 marks]

Please note that the facts are set out in three parts with questions asked after each section, so you are advised to read the question in full before commencing your answer.

Facts - Part One

You are contacted by Guernsey Property Ltd, a local estate agent, in respect of a potential client, Mr Big. Mr Big is a Guernsey born person who lived in the UK for many years, and the UK police recently released him without charge after having arrested him on suspicion of involvement in drug related offences. He now wants to move back to Guernsey and has approached Guernsey Property Ltd about finding a property to be his new family home so that he can, as he put it, "leave the past behind and make a fresh start". So far, all of the houses he has shown an interest in are sizeable farmhouses in excellent condition. Mr Big has informed Guernsey Property Ltd that most of the funds for the purchase will be coming from his father, a retired road sweeper, and the remainder will be cash which Mr Big brought over in his car the last time he travelled to Guernsey. Guernsey Property Ltd is satisfied that this is a genuine transaction to acquire a family home for Mr Big. However, given his recent brush with the law, it is concerned about whether the house purchase might involve any criminality.

Question 4(a)

What do you advise Guernsey Property Ltd about this? **[5 marks]**

Question 4(b)

Guernsey Property Ltd also wants to know if it should raise its concerns with Mr Big or with anybody else but is worried about the legal liabilities that this might give rise to. What do you advise Guernsey Property Ltd about this? **[5 marks]**

Facts - Part Two

Mr Big has now returned to Guernsey and purchased a house which is in his wife's name. The Guernsey police have received an intelligence report from the Financial Intelligence Unit suggesting that Mr Big is involved in fraud so are considering opening an investigation into him. They also have reason to believe that there may be relevant evidence in the UK.

Question 4(c)

What investigatory measures might be open to the police to obtain information in the Bailiwick or to stop him disposing of his house? **[5 marks]**

Question 4(d)

What would be the process for obtaining evidence from the UK? **[3 marks]**

Facts - Part Three

Mr Big has now been convicted of fraud in the Royal Court and HM Procureur has applied for a confiscation order.

Question 4(e)

Describe the process that the court will follow and explain as part of your answer whether it would make any difference if Mr Big could show that he bought his house with the proceeds of drug trafficking, not fraud. **[5 marks]**

If Mr Big had been acquitted, would there be anything the authorities could do to take his house away from him? **[2 marks]**