



Guernsey Bar Examinations

Syllabus 2009

COMPULSORY PAPER

BAILIWICK LAWS, CONSTITUTIONS & ADMINISTRATIONS

PART A

CONSTITUTIONAL RELATIONSHIP BETWEEN GUERNSEY AND UNITED KINGDOM INCLUDING RESPONSIBILITY OF UNITED KINGDOM FOR GUERNSEY

RELATIONSHIP WITH EU

To include: Protocol 3; EU legislation, including regulations and directives, and its/their application or implementation.

INTERNATIONAL TREATIES

To include: process and applicability

STATES OF GUERNSEY

STATES OF DELIBERATION

To include: elections; constitution and functions; the Departments and Committees and their respective functions; the legislative process, to include Billets d'État, States' Reports, and Requête.

STATES OF ELECTION

DOUZAINES

To include: their constitution and functions; functions of parochial officers; parochial administration, including taxation.

ALDERNEY & SARK

To include: the development of the States of Alderney, the Court of Alderney, the Chief Pleas of Sark and the Court of the Seneschal and the administrations and legislative processes of each Island; the relationship between Guernsey and each of its Dependencies, and the responsibility of the States and the Royal Court for each of them.

SOURCES OF GUERNSEY LAW

To include: customary law and the coutumiers; enacted law; Royal Charters; prerogative Orders in Council; Acts of Parliament; registration of legislation; insular legislation, including Projets de Loi, Ordinances, Statutory Instruments/Regulations, and Rules of Court.

CONSTITUTION & JURISDICTION OF BAILIWICK COURTS

To include: Judicial Committee of the Privy Council; Court of Appeal, Royal Court (in all its divisions and functions); Magistrate's Court; Court of Alderney; Court of the Seneschal; Ecclesiastical Court.

Notes

1. Candidates will be expected to know of the origins and development of Guernsey's judicial, legislative and administrative organs to a sufficient standard to be able to understand the current governance of Guernsey in its historical context.
2. Questions will not be asked on the composition of States Departments or Committees; States' Rules of Procedure; elections for parochial officers.

PART B

PROFESSIONAL CONDUCT

To include: The Rules of Professional Conduct of the Guernsey Bar.

NOTE:

Candidates will be expected to have a thorough knowledge of the Rules and their application.

OPTIONAL

PAPER 1

CIVIL PRACTICE AND PROCEDURE

CONSTITUTION & JURISDICTION OF BAILIWICK COURTS

APPEALS FROM BAILIWICK COURTS

To include: requêtes civiles; appeals from the Magistrate's Court to the Royal Court; appeals from the Royal Court to the Court of Appeal; appeals from the Courts of Alderney and Sark to the Royal Court.

PRIVY COUNCIL APPEALS

EVIDENCE IN CIVIL PROCEEDINGS

To include: substantive Guernsey rules of evidence; evidence on commission for purposes of proceedings in Guernsey (see also Note 4 below).

CIVIL PROCEDURE IN THE COURT OF APPEAL, THE ROYAL COURT AND THE MAGISTRATE'S COURT

To include: The Court of Appeal (Civil Division) (Guernsey) Rules, 1964, The Royal Court Civil Rules 2007 as amended; and all other aspects of civil procedure (see also Note 4 below).

PROCEEDINGS BEFORE THE ROYAL COURT WITH AN INTERNATIONAL ELEMENT

To include: jurisdiction of the Royal Court; service out of the jurisdiction; challenge to the jurisdiction; raising forum non conveniens; judicial assistance.

INJUNCTIVE & OTHER RELIEF

PRESCRIPTION & LIMITATION

To include: prescription in respect of realty; interrupting and suspending prescription under statutory provisions and at customary law.

SAISIE

ENFORCING JUDGMENTS

To include: arrests; preferences; reciprocal enforcement of foreign judgements.

Notes

1. Knowledge of Guernsey contract, tort, property and employment law will be expected, to provide the context in which questions may be asked.
2. Questions may be set which refer to any cases decided locally, or to issues upon which there have been no decided cases.
3. Knowledge of practice and procedure will be tested. Accordingly, candidates must be familiar with the form, content and style of procedural documents used in civil proceedings, and be able to prepare skeleton arguments.
4. Candidates are expected to be familiar with the provisions of the Projets de Loi entitled The Evidence in Civil Proceedings (Guernsey and Alderney) Law 2008 and The Magistrate's Court (Guernsey) Law, 2008 both of which were approved by the States of Deliberation on 12 March 2008. Candidates may be examined on both Projets even if they have not been approved and ratified by Her Majesty in Council at the date of the examination. Candidates will also be expected to know the provisions of any subordinate legislation, including Rules of Court that may be enacted on or before 31 March 2009.

OPTIONAL

PAPER 2

CRIMINAL PRACTICE AND PROCEDURE

COMPOSITION & JURISDICTION OF BAILIWICK COURTS

APPEALS FROM BAILIWICK COURTS

CRIMINAL PROCEDURE IN ALL COURTS

EVIDENCE IN CRIMINAL PROCEEDINGS

SENTENCING POWERS & POWERS OF CRIMINAL COURTS

To include: Adult Offenders: imprisonment (including post-release measures); fine; conditional discharge, dismissal; probation; no order; bind-over; binding-over to leave the Island; Young Offenders: youth detention; fine/damages/costs; probation; special care orders/fit person orders/supervision orders; attendance centre orders; Community Service Orders; Ancillary Orders (adults and young offenders): compensation; restitution; confiscation/forfeiture; driving licences; findings of insanity (in outline).

SERIOUS FRAUD INVESTIGATION

PROCEEDS OF CRIME & CONFISCATION (including NON-CONVICTION BASED FORFEITURE)

INTERNATIONAL CO-OPERATION

Notes

1. Knowledge of the following Guernsey criminal laws will be expected; indictable common law offences of murder, manslaughter, rape and perjury; theft and related offences including fraud; offences of violence and disorder; drugs and drug trafficking offences; causing death by dangerous driving and drink driving offences but not other road traffic; and money laundering offences (including financial services regulatory offences).
2. Knowledge of the Codes under the Police Powers and Criminal Evidence legislation will also be required.
3. Candidates will not be expected to have learned statutory provisions relating to penalties for particular crimes. Where appropriate, relevant statutes will be provided.
4. Questions may be asked on sentencing policies, principles and procedures.

OPTIONAL

PAPER 3

PROPERTY LAW

IMMEUBLES & MEUBLES

PURCHASES & SALES OF REAL PROPERTY

To include: conditions of sale; conveyancing procedures; searches; document duty.

JOINT OWNERSHIP

To include: nature of joint ownership; licitation; délaisance; partage.

BONDS & OBLIGATIONS

To include: procedure for taking and registering bonds; priorities; redemption of rentes.

RIGHTS & SERVITUDES

HORIZONTAL CONVEYANCING

USUFRUIT & DROIT D'HABITATION

*INTESTATE AND TESTATE SUCCESSION TO REAL & PERSONAL PROPERTY
(INCLUDING ALDERNEY & SARK).*

SALES/PURCHASES OF PROPERTY OWNING COMPANIES

TRUSTS

To include: inter vivos and testamentary trusts.

Notes

1. Questions will not be asked on Housing Department grants; purchases and sales by the States.
2. Although not formally part of the syllabus, some knowledge of leases may be expected in answering questions.
3. Rote reproduction of standard conveyances, or clauses in such documents will not be required. However, questions may be asked which require candidates to have an ability to draft particular clauses (but see 4. below).

4. Candidates will be expected to know what clauses would ordinarily be incorporated in Estates and (horizontally divided) Building Schedules, but will not be required to draft them.
5. Candidates will be expected to be familiar with the operation of the Greffe and the Cadastre as they are relevant for conveyancing purposes.

OPTIONAL

PAPER 4

PUBLIC LAW

HOUSING CONTROL IN GUERNSEY

To include: all aspects of housing control legislation and administration; appeals; procedures.

PLANNING & DEVELOPMENT IN GUERNSEY

To include: all aspects of insular planning and development legislation and administration; appeals; procedures. Candidates will need to be conversant with the Land Planning and Development Law 2005 and the ordinances thereunder, but also with the regime in place until 5th April 2009 and transitional issues.

APPEALS UNDER REGULATORY REGIMES:

To comprise: financial services business appeals; Office of Utility Regulation appeals.

TAX APPEALS

JUDICIAL REVIEW

To include: when and what relief can be sought; jurisdiction; grounds; procedure.

HUMAN RIGHTS

To include: the impact of the Human Rights (Bailiwick of Guernsey), Law 2000, e.g. supplementing grounds in statutory appeals, judicial review, or as stand-alone actions; ECHR applications.

Notes

1. Candidates should be familiar with the various decision-making powers of Bailiwick public bodies and the means of challenging those decisions, e.g., statutory appeals or otherwise. They should understand the substantive law applied in the various areas listed above and be prepared to apply that practically, whether at the stage of making an application to a public body or challenging an adverse decision. Except where otherwise indicated above, questions may raise Alderney/Sark issues.
2. Useful English law sources for general principles will include books on administrative law and, in particular, judicial review (e.g., de Smith, Woolf and Jowell, *Judicial Review of Administrative Law* and Lewis, *Judicial Remedies in Public Law*).

OPTIONAL

PAPER 5

FAMILY LAW

FAMILY LAW

To include (inter alia but not exclusively): divorce; separation; domestic proceedings; and matters relating to children, including adoption and care proceedings; and guardianships.

Candidates will be expected to be familiar with the jurisdictions of the various courts, procedures, legislation, practice directions and case law relating to separations, divorces, custody, property orders, variation of settlements, domestic violence orders, non removal orders, domicile, tax implications (insofar as they concern the payment of maintenance and other ancillary relief remedies), recognition and enforcement of foreign orders, the various problems relating to unmarried couples, their rights as between themselves, the position of their children, and generally all proceedings relating to family law matters.

Notes

1. This exam will test by reference to typical problems met in practice. Questions may be in the form of a problem or set of problems typically put to a practitioner on which the candidate will be asked to advise. The emphasis will be on practical advice demonstrating an understanding and ability to explain the legal principles applicable to any given situation rather than academic discussion of the law. Candidates will also be expected to have knowledge of all areas in the syllabus, and of Guernsey inheritance law as it may be relevant to family issues.
2. Candidates will be expected to be fully familiar with the appointment of guardians, their duties and powers and the termination of guardianship and the consequences of guardianship.
3. Questions may be asked on equivalent proceedings (where applicable) in the Courts of Alderney and Sark.
4. Candidates will be expected to be able to compare and contrast provisions of the draft (if not yet in force) "The Children (Guernsey and Alderney) Law, 2008" with the provisions of existing family law legislation.

OPTIONAL

PAPER 6

COMPANY AND FINANCIAL SERVICES LAWS

COMPANY LAW (Under The Companies (Guernsey) Law, 2008 (as amended) (including transitional provisions))

To include: types of company: companies limited by shares; companies limited by guarantee; protected cell companies; incorporated cell companies; formation; memorandum; objects; articles of incorporation; registry and registration requirements; consents; registers maintained; altering constitution; capital; management; distributions; solvency certificates; powers and obligations of directors to company and third parties; powers of shareholders; meetings and resolutions; minority protection; financial assistance for acquisition of shares; purchase of own shares; treasury shares; no par value shares; administration; corporate insolvency including desastre; winding up; migration; amalgamation.

TRUST LAW (As it relates to commercial structures and activities)

To include: the concepts of unit trusts and purpose trusts.

BANKING & SECURITY

To include: borrowing by Guernsey commercial enterprises; security interests and assignments under Guernsey law; set-off; liens and pledges; foreign law charges; priorities.

PARTNERSHIPS & LIMITED PARTNERSHIPS

To include: role of general partners; registration; incorporated status; limited liability; claw back.

INVESTMENT, BANKING, INSURANCE & FIDUCIARIES BUSINESSES

To include: the Guernsey Financial Services Commission, its powers and functions, and the regulatory laws relating to Banking Supervision, Protection of Investors, Fiduciaries and Insurance Business.

Notes

1. This syllabus has been designed primarily for candidates wishing to practise commercial law in Guernsey. Questions may require candidates to advise clients in typical scenarios. Accordingly, candidates will be expected to be familiar with applicable legislation and case law. Relevant legislation will be provided.
2. A basic knowledge of Guernsey tax law and practice as it applies to companies and corporate/commercial transactions will be expected.
3. The Paper will comprise four compulsory questions.