

## **PCLL CONVERSION EXAMINATION JANUARY 2020**

Title of Paper : Evidence  
Date : 8 January 2020  
Time : 2:30 p.m. – 5:30 p.m.

### **Instructions**

1. Write your **candidate number** on the cover of each answer book. Do **NOT** write your name in the answer book.
2. Start each answer on a separate page of the answer book.
3. Write your answers only in the answer books provided.
4. This is a three-hour examination.
5. This is an open book examination.
6. **NO** reading time is designated for this paper.
7. This paper consists of 4 pages, including five compulsory questions. A total of 50 marks may be awarded. Candidates must answer **ALL** five questions. There is **NO** element of choice.
8. Each question is worth 10 marks.
9. The passing mark for this paper is 25 marks.

**DO NOT OPEN THIS QUESTION BOOK  
UNTIL YOU ARE TOLD TO DO SO**

## PCLL Conversion Examination January 2020

### Evidence

#### **Question 1 (10 marks)**

Eric has been charged with the murder of his wife Mindy at their apartment in Tai Koo Shing on 21<sup>st</sup> January 2019. The prosecution case is that on the day of the incident, Eric attacked Mindy in the bathroom by drowning her. Eric allegedly pushed Mindy under the water whilst she was taking a bath. During the attack, Elsie, Eric's sister who lived with them was at home at the time. Elsie heard screams coming from the bathroom. She rushed into the bathroom and saw Eric holding Mindy's head under the water. In a state of shock, Elsie ran next door to her neighbour Lucy's apartment. She shouted at Lucy, "oh my God Eric has just drowned Mindy by..." The shock of what she had just witnessed then killed Elsie instantly by way of a heart attack.

Eric was later arrested by police. He told them that Mindy's death must have been a tragic accident and that he believed Mindy had had an epileptic seizure, something that had happened before. He also said that he was in Beijing at the time of Mindy's death. He showed police the bill from the Beijing Mandarin hotel, which indicated his name for a 2-night stay from 20<sup>th</sup> to 22<sup>nd</sup> January 2019.

Advise on the following evidential issues:

- a) The prosecution wishes to call Lucy to give evidence as to what Elsie had shouted to her, just before she died. **(6 Marks)**
- b) Eric wishes to be able to produce the hotel bill in his defence in order to show that he was not in Hong Kong at the time of Mindy's death. **(4 Marks)**

#### **Question 2 (10 marks)**

When might a criminal court decide to hear expert opinion evidence from a witness? How is the expertise of a witness determined if there is any challenge in this respect, in the Court of First Instance?

#### **Question 3 (10 marks)**

Alex, Bill and Chan are all flatmates and have all been jointly charged with conspiracy to handle stolen goods. They stand trial in the Court of First Instance.

At trial Alex gives evidence in his defence. He claims that he had no idea that a large number of boxes bought to the apartment one evening by Chan had contained stolen mobile phones. It was only when police raided the apartment and arrested them all, that he had discovered this. Alex has three previous convictions for burglary.

Bill gives evidence in his defence. He states he is innocent and knew nothing of any stolen goods whatsoever. Bill did not blame either Alex or Chan in his evidence in court. However, Bill's barrister also calls evidence from a witness Derek who testifies that Bill regularly attends religious services of the Hong Kong Christian brotherhood. Bill also has a previous conviction for common assault from 2015, which is now spent under the provisions of the Rehabilitation of Offenders Ordinance (Cap 297).

Chan also gives evidence at trial and claims he has no idea about any of this. He says he had only been a flatmate of the other two for a week at the time. He had no idea that the apartment was being used by the other two "criminals" to deal in stolen property. Chan denies bringing any boxes back to the apartment as alleged by Alex and states he had never trusted Alex, as he always seemed to be mixing with "dubious" types. Chan has no previous convictions.

Advise all three defendants, stating whether their previous characters could be admitted into the evidence at trial?

#### **Question 4 (10 marks)**

Lok has been charged with dangerous driving. The prosecution alleges that Lok drove at significant speed out of a side road in Causeway Bay and collided with a car being driven by Susie. An elderly independent witness Frank was standing close by to the accident. Frank gave a statement to police two weeks after the incident, in which he clearly blamed Lok for the collision, saying that he was driving far too quickly and pulled out into the main road when he did not have right of way. Another witness Desmond also blamed Lok for the collision. He too gave a statement to police on the same day as the incident. During Lok's trial apart from Susie's evidence, the following occurs:

- a) Frank gives evidence for the prosecution and when questioned by the prosecutor states he can hardly recall the incident now as it had happened six months previously. He gets the day wrong and confuses the street location when asked to recall those details by the prosecutor, whilst he is in the witness box. He tells the court that his memory isn't so good any more, and he hasn't had time to read his statement before the trial as the traffic delayed his arrival at court. **(5 Marks)**
- b) Desmond refuses to answer any questions put by the prosecutor. He realised shortly after giving his statement to the police that Lok was his old school friend and Desmond didn't want to get him into trouble now. **(5 Marks)**

What evidential issues arise concerning a) and b) above?

#### **Question 5 (10 marks)**

Mak has been charged with indecently assaulting his daughter Celia aged 13 on the MTR. The prosecution alleges that Mak placed his hand on the upper part of Celia's leg underneath her dress, as she sat next to him whilst she was travelling home with her father from school on the

MTR. The incident was also witnessed by both Mak's wife Sally and another passenger Michael. Michael is an attaché at the British embassy and enjoys diplomatic immunity.

Mak denies the offence and will plead not guilty. The prosecution wishes to call Celia, Sally and Michael at Mak's trial. Celia wants to give evidence against Mak as this is not the first time her father has assaulted her but Sally is reluctant to do so. Michael has just been recalled to the UK and does not want the inconvenience of having to return to Hong Kong for any trial.

Discuss the issues which arise with regard to the competence and compellability of each of the three prosecution witnesses.

**~ End of Examination Paper ~**