

## **PCLL CONVERSION EXAMINATION JANUARY 2023**

Title of Paper : Evidence  
Date : 6 January 2023  
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 2023

### Evidence

#### Answer all Questions

#### Question 1 (10 Marks)

Hong is charged with theft, contrary to section 9 of the Theft Ordinance (Cap.210). The Prosecution case is that on 23 November 2022 at around 2am, Hong stole food items from convenience store ABC, where he worked as part-time store assistant during the semester break of his undergraduate studies.

The Prosecution called Ken, the convenience shop owner, to testify as prosecution witness. During cross-examination, the Defence asked Ken about a previous court case where Ken's evidence given as a prosecution witness was found to be incredible. Specifically, the trial judge in that previous case did not believe Ken's evidence that he witnessed the defendant using an iron rod to smash the window of the convenience store, and the defendant was acquitted. Ken denied the Defence's suggestion.

Advise:

- a. whether the Defence can ask Ken about the previous court case; and **(6 Marks)**
- b. whether the Defence can adduce the verdict in the previous court case to rebut Ken's denial. **(4 Marks)**

#### Question 2 (10 Marks)

John (aged 50) and Eddie (aged 40) are jointly charged with indecent assault. In the course of the trial, it was revealed that John was convicted of theft (pickpocketing at an outdoor carnival event) and illegal gambling twenty years ago. Similarly, it was revealed that Eddie was convicted of attempted rape and five counts of indecent assault in the past two years.

- a. In the witness box, John contended that he would never commit such an immoral act as he is a devout Buddhist. Discuss the likely directions on Good Character that a trial judge would give in respect of John, if any, without regard to the matters in (b) below. **(7 Marks)**
- b. During cross-examination, John divulged that he had stolen donation money from a Buddhist Monastery three years ago, as he was cash-strapped back then. John added that he has learnt his lesson and is now a devout Buddhist. Discuss the further directions on Good Character that a trial judge would give in respect of John, if any. **(3 Marks)**

**Question 3 (10 Marks)**

Johnny is a secondary school teacher, and he is charged with one count of assault occasioning actual bodily harm (“AOABH”), contrary to section 39 of the Offences Against the Person Ordinance (Cap. 212). According to the Prosecution case, Johnny felt offended as one of his students kept interrupting his teaching, and openly humiliated Johnny for using outdated materials and having no idea about what he was teaching. Johnny got so angry that he directed his laser pointer (his teaching aid) at the student. The Prosecution adduced a medical report from Dr Cheung stating that the student suffered from 3-4% vision impairment thereafter.

The Defence wished to engage Dr Lau, the physics teacher from the same secondary school to prepare an opinion for him. Dr Lau is accredited with a PhD degree in physics, and has taught the subject for over twenty years. After assessing the voltage of the laser pointer and the distance between Johnny and the student, Dr Lau concluded that the laser pointer used by Johnny was not strong enough to cause 3-4% vision impairment to the student.

Explain whether the Defence can adduce Dr Lau’s oral or written opinion at trial.

**(10 Marks)**

**Question 4 (10 Marks)**

Doctor Chau was arrested on suspicion of committing indecent assault on a passenger while commuting on public transport, and was taken to the Mongkok police station. While conducting strip search, Police Officer A noticed that Doctor Chau had placed a sexual stimulator behind his penis. Police Officer A jeered at him, saying “*You are impotent, eh? Do not give us a hard time, or else I will expose your little trick to my subordinates, and let you have some fun time with other inmates*”.

After ten minutes, Police Officer A took Doctor Chau into the room for a cautioned interview. Police Officer A once again took off Doctor Chau’s pants, and turned on the air-conditioner to turbo mode, saying “*just tell me what happened on the train, and you can retrieve your pants and head home for rest.*” When Doctor Chau asked for his lawyer, Police Officer A said “*Of course you can, but let me first share your secret with my subordinates, ha ha*”. He also made a hard snap on the buttock of Doctor Chau, saying “*You enjoy doing that, don’t you?*” After that, Police Officer A placed a CD-ROM disk on the table, telling Doctor Chau that his misdeeds were captured on CCTV, and that the victim has made a witness statement to the effect that she would sue Doctor Chau no matter what it takes (in fact, the CD-ROM disk has never been used, and the victim was unable to pinpoint who the culprit was). Upon hearing all of these, Doctor Chau made a confession statement admitting guilt, and he was released on bail shortly afterwards.

At trial, the Defence wish to exclude Doctor Chau’s confession statement. Advise.

**(10 Marks)**

**Question 5 (10 Marks)**

a) Danny was arrested and charged with assault occasioning actual bodily harm (“AOABH”), contrary to section 39 of the Offences Against the Person Ordinance (Cap. 212). At trial, the prosecution wishes to call his wife, Carrie, to testify against Danny.

i) Can the prosecution do so?

**(2 Marks)**

ii) Would your answer be different if the AOABH was committed against his minor child Benny?

**(2 Marks)**

iii) Would your answer be different if Carrie herself is being charged with AOABH against their minor child as well?

**(2 Marks)**

b) The prosecution wishes to call their minor child, Benny, to testify against Danny. Benny is aged 13. While Benny is willing to give evidence, he is terrified of confronting Danny in person. Advise Benny.

**(4 Marks)**

**- End of Examination Paper -**