

**PCLL Conversion Examination**  
**June 2024 Examiner's Comments**  
**Evidence**

**Question 1**

Overall, candidates performed well on this question, displaying a solid understanding of the burden and standard of proof in the legal system. Most answers were detailed and thorough, effectively distinguishing between the burdens and standards in criminal and civil cases within the Hong Kong legal framework.

Candidates correctly introduced the concepts of burden and standard of proof, emphasizing their critical role in achieving justice and fairness in both criminal and civil litigation. In discussing criminal cases, the stronger candidates defined the legal and evidential burdens, noting that the prosecution carries both to prove the defendant's guilt beyond a reasonable doubt. They also explained the rationale behind this high standard, highlighting its importance in protecting the rights of the accused and ensuring the severe consequences of a criminal conviction are justly applied.

Furthermore, candidates discussed how specific defences, such as duress and self-defence, require the defendant to meet an evidential burden, citing relevant cases like *R v Gill* [1963] and *R v Abraham* [1973]. They emphasized that this does not shift the ultimate burden of proof from the prosecution.

In addressing civil cases, stronger candidates clarified that the burden of proof generally lies with the claimant, who must establish their case on the balance of probabilities. They illustrated how this standard is more suited to disputes over rights, contracts, and liabilities, reflecting the less severe consequences of civil litigation compared to criminal cases. Examples such as *Abrath v North Eastern Railway Co.* (1883) were effectively used to demonstrate this point.

Most candidates successfully compared the higher standard in criminal cases (“beyond a reasonable doubt”) with the lower standard in civil cases (“balance of probabilities”), emphasizing the principle of presumption of innocence in criminal cases and the principle of fairness in civil disputes. They also analyzed the implications of these differences for legal practitioners, including strategies for presenting evidence and framing arguments in court.

**Question 2**

This question was less well-answered compared to others, primarily because some candidates failed to recognize that the most appropriate exception to the hearsay rule was *res gestae*. Additionally, a number of candidates did not address the second part of the question concerning Mr. Chan's mental state and history of misidentification.

Candidates were expected to contextualize hearsay within the Hong Kong legal framework, defining it as statements not made in court that are offered in evidence to prove the truth of the matter asserted. They were to introduce *res gestae* as a key exception to this rule, characterized by the allowance for statements made in spontaneous reaction to a startling event, where spontaneity is seen as a guarantee of reliability. Many responses failed to adequately detail the

principles underpinning the *res gestae* exception, which necessitates spontaneity and a direct connection to the event to render statements admissible despite being hearsay.

The complexity of the scenario was heightened by Mr. Chan's mental state and history of misidentification, which should have led candidates to discuss the potential challenges to the reliability of his dying words. Strong answers would have examined how these factors could influence the spontaneity and reliability of Mr. Chan's statement, raising doubts about its admissibility.

Candidates were expected to highlight the judicial process for determining the admissibility of statements under *res gestae*, noting the need to consider the totality of circumstances, including the declarant's mental state and potential for error or concoction. References to relevant cases, such as *R v Harris* [2002], were crucial to illustrate how courts handle such complexities.

### **Question 3**

This question was fairly straightforward, but it was surprising that some candidates completely missed the main issues. As a result, performance varied significantly; those who recognized the issues did very well, while those who did not struggled considerably.

The question addressed a witness whose court testimony diverged significantly from their previous statements, implicating the principles surrounding the treatment of "hostile" or "adverse" witnesses under s12 of the Evidence Ordinance (Cap 8). Candidates were expected to discuss the legal framework that allows for the declaration of a witness as hostile, requiring judicial determination based on the witness's demeanor and content of their testimony, as illustrated in *R v Prefas & Pryce* (1988).

Candidates who performed well explained the prosecution's legal response in applying for the witness to be declared hostile, allowing the use of previous inconsistent statements to challenge the witness's testimony. They also noted the risks involved, such as casting doubt on the prosecution's evidence collection and witness preparation processes.

For the second part of the question, concerning the defence's aggressive line of questioning, candidates were expected to discuss the ethical dilemma and the role of the trial judge in maintaining courtroom decorum and ensuring fair treatment of witnesses. Strong answers were expected to reference cases such as *R v Brown* [1998], highlighting the judge's authority to intervene when cross-examination becomes argumentative or bullying.

### **Question 4**

The three subparts in this question dealt with the exceptions to the rule concerning previous consistent statements at common law. Most candidates performed well in parts (a) and (b). Part (c) also did not present significant difficulties, though the answers were generally less detailed.

- (a) The exception for recent complaints in sexual cases allows the admissibility of a victim's immediate report to support their credibility. In Emma's case, her conversation with Sarah

the morning after the incident falls within this exception. Drawing from *R v Valentine* [1996], Emma's complaint would be admissible to counter claims of fabrication, demonstrating her consistency in reporting the event. Strong answers clearly linked the admissibility of Emma's statement to its spontaneity and timing.

- (b) Another exception permits a witness's previous consistent statement to counter claims of recent fabrication. In Michael's trial, his immediate statement to the police, which mirrors his trial testimony, can be introduced to rebut suggestions of a concocted self-defence claim, as seen in *R v Oyesiku* (1971). The judge must be satisfied that the cross-examination raised an accusation of fabrication for this exception to apply. Well-prepared candidates effectively highlighted the importance of demonstrating the consistency of Michael's account.
- (c) Previous identifications by a witness can be admitted to show consistency, even if the witness struggles to make the same identification at trial. This exception acknowledges the importance of initial identifications, especially when a witness's ability to identify the suspect may diminish over time due to stress or other factors. Linda's inability to confidently identify Derek during the trial, despite having done so in a police lineup, can be addressed by introducing her prior identification under *R v Christie* [1914]. This reinforces the evidence against Derek and underscores Linda's reliability as a witness despite the effects of time and trial stress on her memory. Strong responses demonstrated an understanding of the rationale behind this exception and its practical application in maintaining the integrity of witness identifications.

### Question 5

This question was relatively straightforward, and most candidates performed well, especially in parts (a) and (b). Part (c) presented more difficulties, and those who were less prepared either wrote very little or did not attempt that part of the question.

- (a) Under the Criminal Procedure Ordinance (CPO), spouses are generally competent to testify in criminal proceedings, but their compellability varies. For cases involving personal injury by one spouse against another, such as domestic violence, the injured spouse is both competent and compellable to testify for the prosecution (s 57(3) CPO). In Annie and Ben's case, Annie is competent and compellable to testify against Ben due to the nature of the charge. This provision ensures victims of domestic violence can seek justice. Strong answers demonstrated a clear understanding of the legal provisions and their application to domestic violence cases.
- (b) According to s 57(9) of the CPO, former spouses, like Gina, are competent and compellable to testify as if they were never married. However, s 57(10) states that a former spouse is not compellable to testify for the prosecution about matters that occurred during the marriage unless they would be compellable under subsection (3) if still married. Since Henry is charged with fraud, not covered under subsection (3), Gina cannot be compelled to testify about marital confidences related to the fraud unless they fall within the specified exceptions. Well-prepared candidates effectively highlighted the nuances of spousal testimony post-divorce and the limitations imposed by the CPO.

- (c) A defendant can be transformed into a prosecution witness against a co-defendant by dropping charges or granting immunity. This strategy strengthens the prosecution's case through insider testimony. In the complex corruption case mentioned, D1's change from defendant to witness against D2 requires judicial oversight to maintain trial fairness and integrity. The defence must be allowed to question any deals made between the prosecution and D1, as this could affect D1's testimony's credibility. This scrutiny, as endorsed by *R v Tsui Lai-ying and Others* [1987], ensures D1's testimony is rigorously evaluated for credibility and relevance to D2's charges. Stronger answers explained the judicial oversight required and the importance of maintaining the credibility of witness testimony in complex cases.