

PCLL CONVERSION EXAMINATION JANUARY 2024

Title of Paper : Evidence
Date : 5 January 2024
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 3 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 2024

Evidence

Question 1 (10 marks)

“The rule against prior consistent statements is overly restrictive, sometimes barring the entry of testimony that could otherwise be critical to establishing a witness's credibility or the consistency of his or her narrative. In the context of Hong Kong's legal framework, such strict adherence to preventing prior consistent statements skews the trial's fairness and impartiality.”

Discuss. **(10 marks)**

Question 2 (10 marks)

In the midst of a highly publicized robbery case, the prosecution's case heavily depends on identification evidence given by the victim, Mr. Chan. The incident occurred in a dimly lit alley, and Mr. Chan was under significant stress, having only a brief moment to observe the assailant's features. Following the robbery, a media frenzy broadcasted numerous suspects' images across television and online platforms, amid which Mr Chan confidently identified John, who is of Sri Lankan descent, from a police lineup. Despite John asserting an alibi, claiming he was at a different location at the time of the crime, the prosecution presents strong evidence during the trial to refute this alibi.

Considering the principles of identification evidence in Hong Kong, discuss the likely approach the court will take in evaluating this evidence. Your analysis should include the judicial safeguards put in place to prevent miscarriages of justice and the criteria used by trial judges to assess the reliability and admissibility of the identification evidence.

(10 marks)

Question 3 (10 marks)

While investigating an arson that caused significant damage and injuries in a residential building, police focused on a suspect named David. A distinct chemical accelerant was used in the fire, and David's fingerprints were found on a container linked to this chemical at the scene.

David was arrested and subjected to a gruelling 15-hour interrogation without legal representation, during which he was threatened, and his basic needs were denied. The interviewing officer coerced David by stating that his wife would also be arrested if he did not confess. Under these conditions, David confessed to the crime and disclosed the purchase and location of the chemical, leading to its recovery by the police.

At trial, David retracted his confession, citing the duress and oppressive conditions during the police interrogation. Critically analyze the evidential issues that arise from the circumstances of the confession and the subsequent discovery of the chemical accelerant.

(10 marks)

Question 4 (10 marks)

Celeste and Alan are facing joint charges of fraud. Celeste, an esteemed investment advisor known for her financial prudence seminars, is accused of defrauding millions of dollars from clients. The investigation was sparked by a former client's claim that he was pressured into investing by promises of high returns at one of her seminars.

Under cross-examination at the trial, Celeste vehemently denied the fraud allegations and asserted, "These accusations are disgraceful! Throughout my career, I have received numerous awards for my ethical standards and professionalism in finance, and clients have trusted me for years. I have managed their investments without a single complaint until this unfortunate misunderstanding. The fact is that I'm not capable of such deception!"

Alan, who owns a tech store celebrated for cutting-edge products, is accused of providing technical assistance for Celeste's seminars and selling specialized 'privacy smartphones' used in the alleged fraud. Alan was arrested after Inspector Lee, without a warrant, found incriminating evidence in Alan's shop that suggests his involvement in Celeste's scheme.

Celeste has a previous conviction for assault.

(a) Can Celeste be cross-examined about her previous conviction for assault? (5 marks)

(b) Is the evidence found by Inspector Lee in Alan's shop admissible in court? (5 marks)

Question 5 (10 marks)

Casey is on trial for an alleged theft of a watch from a department store, for which she was arrested nine months ago. She claims that the watch was accidentally placed in her bag by a salesperson, and she was unaware of its presence until she was stopped outside the store.

(a) Casey's defence intends to have her coworker, Jordan, who accompanied her on the shopping excursion, testify. Jordan provided a written statement to the police on the same day Casey was arrested.

(i) Jordan wishes to review his previously given written statement to the police to refresh his memory before testifying. Is this permissible? Provide reasons for your response. (3 marks)

(ii) Assuming that Jordan did not request to review his written statement prior to testifying but instead asked to consult it for the purpose of refreshing his memory while he is on the witness stand, how should the court address this request? (4 marks)

(b) The defence has procured a behavioral analysis expert, Taylor, who has analyzed Casey's behavior on the store's CCTV footage and concluded that it does not align with typical shoplifting behavior. The defence intends to call Taylor to testify to the contents of the report.

Under what circumstances is Taylor's evidence admissible? (3 marks)

~ End of Examination Paper ~