PCLL Conversion Examination
January 2024 Examiner's Comments
Evidence

Question 1

Most candidates displayed a good understanding of the rule against prior consistent statements and were proficient in highlighting the key issues. They recognized that this rule typically excludes prior statements by a witness that align with their in-court testimony, aiming to prevent confirmation bias and ensure trial neutrality. The rule is based on the belief that out-of-court statements, not made under oath, lack reliability and can lead to a waste of judicial resources and potential distortion of the truth, as exemplified by *R v Roberts* (1942).

However, students also identified important exceptions to this rule, which were not fully captured by all. One notable exception allows for prior consistent statements to rebut claims of recent fabrication, illustrating that such statements can serve to demonstrate the witness's consistency rather than verify the statement's content itself, as seen in cases such as *Nominal Defendant v Clements* (1961).

Additionally, in sexual offence cases, courts may admit evidence of a victim's recent complaint to support their credibility, acknowledging the unique challenges in these cases. Another exception includes statements that are part of the "res gestae" or spontaneous exclamations closely linked to the event, thus deemed reliable due to their immediacy and context. The rule also makes an exception for prior identifications of persons, given their potential reliability when made soon after the incident, as demonstrated by *R v Christie* [1914].

Most candidates disagreed with the assertion that the rule against prior consistent statements unduly disrupts trial fairness, arguing that the embedded exceptions ensure a balanced approach to justice, preserving both evidence integrity and defendant rights.

Question 2

For this question, the first part on identification was generally well-handled by most candidates, indicating a clear understanding of the principles involved. However, the responses to the second part, focusing on John's alibi and the implications of forwarding a false alibi, were not as comprehensive or well-answered, though overall acceptable.

A thorough answer would begin by addressing the critical importance of the Turnbull guidelines (*R v Turnbull* [1977]), as adopted in Hong Kong in *Chik Shui-wai & Another v The Queen* [1977], which emphasize the need for caution due to the unreliability of eyewitness identification. These guidelines mandate a detailed consideration of the identification's quality, assessing factors such as the visibility, duration of observation, distinctive features, the interval between the event and identification, and the witness's confidence level.

In critiquing Mr. Chan's identification of John, a comprehensive answer would point out its potential weaknesses, such as the brief interaction under poor lighting conditions and the possibility of being influenced by prior media exposure. This places the identification on uncertain grounds.

When discussing John's alibi, a well-rounded response would delve into the implications of its rejection on the overall case. The answer should clarify that although the discrediting of John's alibi might seem to support Mr. Chan's identification, it necessitates a cautious approach by the court. The jury should be instructed that a false alibi, while suspicious, does not inherently prove guilt. It's crucial that the jury is convinced beyond a reasonable doubt that the alibi was fabricated with the intention to mislead, without any other plausible reason for the falsehood, for it to strengthen the identification evidence.

Referencing Hong Kong case law, such as *HKSAR v Mo Shiu Shing* [1999], the answer would emphasize that disproving an alibi does not automatically place the accused at the crime scene. The identification evidence must still be critically evaluated on its own merits, in accordance with the Turnbull guidelines, ensuring a judicious and fair assessment.

Question 3

In addressing this question, candidates generally performed satisfactorily when discussing the voluntariness of confessions, aligning with the principle that only voluntary confessions are admissible in Hong Kong law, as established in *Ibrahim v R* [1914]. This principle ensures the fairness of trials and the integrity of the judicial process.
However, the second part of the question, concerning derivative evidence, proved more challenging for many candidates. Some provided very brief responses, while others did not attempt it at all.

A comprehensive answer would begin by analyzing the conditions under which the confession was obtained, drawing on cases like *R v Priestley* (1965) and *R v Prager* [1972], to evaluate if the 15-hour interrogation, denial of legal representation, and deprivation of necessities constituted "oppression" or "inhuman treatment." Such conditions could potentially render the confession inadmissible due to the coercive environment in which it was made.

The discussion should then shift to the complex issue of derivative evidence. This entails evidence discovered as a result of a confession that might be inadmissible. The foundational case of *R v Warwickshall* (1783) posits that real evidence derived from an inadmissible confession can be admissible if it is sufficiently disconnected from the coercion or oppression surrounding the confession. This principle was reaffirmed in *Lam Chi-ming v R* [1991], highlighting the admissibility of evidence that independently implicates the accused without direct reliance on the inadmissible confession.

Applying these principles to the given scenario, candidates were expected to critically assess whether the evidence obtained from David's confession (specifically, the container) would independently implicate him, regardless of the confession's admissibility. This part of the answer

required an understanding of the nuanced legal stance on derivative evidence and its implications for the admissibility of evidence discovered as a result of potentially coerced confessions.

Question 4

For question 4, students generally performed quite well on average, showing a good grasp of the concepts involved in both parts of the question.

Part (a) required an understanding of Section 54(1)(f) of the Criminal Procedure Ordinance (CPO), which protects a defendant from being cross-examined about their character or previous convictions to prevent prejudicial assumptions by the jury. Candidates needed to highlight the conditions under which a defendant might lose this protection, especially when asserting good character, thus potentially opening themselves up to cross-examination about past misconduct. The key issue revolves around whether the defendant has introduced evidence of good character, making it a legal determination for the judge, who retains discretion over the extent of any cross-examination on previous convictions.

Most answers for part (b) correctly identified that, generally, all relevant non-confession evidence is admissible, as established in *R v Leatham* (1861). However, the crux of this part was to analyze whether, under the circumstances presented, the evidence should be excluded based on the court's discretion to ensure a fair trial. The scenario required candidates to consider the balance between the probative value of the evidence and its potential to prejudice the trial's fairness. Although the evidence's admissibility primarily depends on its relevance, the court must carefully weigh whether its inclusion could lead to an unfair trial. Given the opportunity for Alan's defence to cross-examine the presenting officer and for Alan to testify regarding the found evidence, the likelihood of exclusion would be low. However, the decision ultimately rests on whether the judge believes the evidence's relevance and importance substantially outweigh any prejudicial impact it might carry.

Question 5

For the last question, the first two parts were straightforward and generally well-handled by most candidates. They pertained to the permissibility of witnesses using their statements to refresh their memory before and during their testimony in court.

For a(i), it was widely recognized that witnesses are allowed to review their witness statements before entering the courtroom to refresh their memory, as established in *R v Richardson* [1971]. This approach is based on the rationale that giving evidence should not be a test of memory, and prohibiting witnesses from reviewing their statements might impede the accuracy of honest testimony.

For a(ii), following the principles outlined in *R v Da Silva* [1990], candidates understood that witnesses could also use their statements to refresh their memory while on the stand. This is contingent upon several conditions, such as the fading of memory over time, the statement being made close to the events in question, and the statement reflecting the witness's recollection when it was made. The flexibility in allowing witnesses to consult their statements during testimony

acknowledges the practical challenges of recalling details accurately after significant time has passed.

Part (b) of the question focused on the admissibility of expert evidence, which was correctly identified and addressed by those who grasped its significance. Expert evidence is admissible if it is relevant, provided by a qualified expert, pertains to matters requiring specialized knowledge, and is based on reliable principles applied to the case's facts. Although a small number of students missed the point regarding the specific focus on expert evidence, those who recognized it generally had no difficulties articulating the criteria for its admissibility.