

## **PCLL CONVERSION EXAMINATION JUNE 2024**

Title of Paper : Evidence  
Date : 13 June 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 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 June 2024**

### **Evidence**

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

In the Hong Kong legal system, the distinctions between the burden and standard of proof in criminal versus civil cases embody fundamental principles of justice and fairness. Through an examination of the evidential and legal burdens in criminal cases, contrasted with the burden of proof in civil cases, analyze how these distinctions serve the underlying objectives of each judicial process. In your answer, discuss the implications of these burdens for the parties involved and the outcome of litigation.

**Support your analysis with relevant case law and the principles demonstrated in the context of specific defences in criminal cases (e.g., duress, self-defence) and claims in civil cases (e.g., breach of contract, negligence). Consider how the allocation of these burdens influences the evidentiary requirements and the strategic approach of legal practitioners in Hong Kong courts. (10 marks)**

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

In a tragic incident at a local park, Mr. Chan is discovered with life-threatening injuries. Moments before losing consciousness, several witnesses hear him exclaim, "I can't believe my business partner did this to me over our dispute about the company." Shortly after making this statement, Mr. Chan succumbs to his injuries and passes away. However, Mr. Chan had been suffering from severe stress and paranoia in the weeks leading up to the incident, often expressing unfounded fears about various individuals wishing him harm, including his business partner. Furthermore, there had been multiple reported instances of Mr. Chan misidentifying individuals during moments of high stress.

**Analyze the considerations impacting the admissibility of Mr. Chan's final utterance within the framework of hearsay and discuss how the context of Mr. Chan's recent mental state and patterns of misidentification might influence the evaluation of his dying words' reliability and their role in the trial of his business partner.**

**(10 marks)**

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

- (a) At the trial concerning a high-stakes financial embezzlement case, a key figure initially believed to support the prosecution's narrative offers testimony that starkly contradicts earlier statements provided during the investigation. This testimony unexpectedly shifts in a way that not only surprises but potentially derails the prosecution's carefully constructed case. The testimony raises questions about the witness's reliability and the strategic responses available within the courtroom.

**Analyze the procedural and legal responses that might be considered by the prosecution in light of this development. Discuss the implications of this shift for the prosecution's case, considering the legal principles guiding the management of such testimony within the trial process. (6 marks)**

- (b) Later in the same trial, a different prosecution witness faces intense questioning from the defence, not merely about the facts but extending into personal territory with hypotheticals and insinuations that seem to question the witness's overall integrity.

**Discuss how the court is expected to oversee this situation, drawing on the rules and ethical guidelines that govern courtroom conduct to protect the trial's fairness.**

**(4 marks)**

**Question 4 (10 marks)**

- (a) After a late-night gathering, Emma confides in her friend Sarah at the first opportunity the following morning. She details an unwanted encounter she had with an acquaintance, John, describing his aggressive behavior and her distress. Emma later decides to press charges. During the trial, the defence challenges Emma's credibility, suggesting her accusations are fabricated.

**Analyze the admissibility of Emma's early morning conversation with Sarah as evidence.**

**(4 marks)**

- (b) Michael is on trial for an alleged assault that occurred during a neighborhood dispute. In his defence, he claims he acted in self-defence after being threatened. However, during cross-examination, the prosecution insinuates that Michael's self-defence claim is a recent fabrication designed to evade liability. Michael's lawyer seeks to introduce a statement Michael made to the police immediately following the incident, which aligns with his testimony.

**Discuss the conditions under which Michael's immediate post-incident statement to the police can be introduced to rebut the prosecution's claim of recent fabrication.**

**(3 marks)**

- (c) Linda witnesses a robbery and identifies the suspect, Derek, in a police lineup the next day. At trial, Linda struggles to identify Derek due to the stress and passage of time. The prosecution wishes to introduce Linda's prior identification from the lineup as substantive evidence of Derek's involvement in the robbery.

**Evaluate the circumstances under which Linda's previous identification can be considered both as evidence of consistency and as substantive evidence of the facts.**

**(3 marks)**

**Question 5 (10 marks)**

- (a) Annie reports her husband, Ben, for physical assault and he is subsequently charged with domestic violence. During the trial, the prosecution seeks to compel Annie to testify against Ben regarding the specifics of the assault.

**Discuss whether Annie is competent and compellable to give evidence against her husband.**

**(2 marks)**

- (b) Gina, now divorced from Henry, is called by the prosecution to testify in a case where Henry is charged with fraud. The alleged fraud occurred while they were still married.

**Analyze Gina's competence and compellability to testify against Henry.**

**(4 marks)**

- (c) In a complex corruption case involving several public officials, D1's charges are dropped by the prosecution in exchange for their testimony against D2, implicating D2 in more severe charges.

**Discuss the procedural safeguards and ethical boundaries that should govern this exchange, including the defence's right to probe the circumstances and potential biases in D1's testimony.**

**(4 marks)**

**~ End of Examination Paper ~**