

PCLL CONVERSION EXAMINATION JUNE 2023

Title of Paper : Evidence
Date : 13 June 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 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 June 2023
Evidence

Question 1 (10 marks)

Joe is charged with the rape of Selena. Joe's defence is that the sex was consensual, and that right after the sex, he heard Selena call her friend Shannon and said, "*the sex was good*". At the trial, would Joe be allowed to call Shannon as a defence witness to testify to the above statement in the following 3 situations?

Give a full analysis, and explain the purpose of calling Shannon in each situation. If you feel additional facts are needed before you can make a determination, state what they would be.

- a) **Situation 1: Selena did not testify. (5 marks)**
- b) **Situation 2: Selena testifies but denies making the statement to Shannon. (2.5 marks)**
- c) **Situation 3: Selena testifies and admits to making the statement to Shannon. (2.5 marks)**

Question 2 (10 marks)

Peter is charged with murder. He wants to rely on various alternative defences, namely insanity, diminished responsibility, and self-defence. Peter is nervous about the prospect of being subject to cross-examination, and would prefer not to testify if he does not have to. He instructs his counsel to put forward his defences in the closing speech only, and to ask the jury to consider them.

How would you advise Peter? (10 marks)

Question 3 (10 marks)

Dicky is a corrupt public official in charge of processing tenders for government contracts for building children's playgrounds. Throughout a period of 5 years, he had been secretly receiving bribes from George, whereby Dicky would disclose the details of the tenders received from George's competitors, such that George could adjust his tender in order to win the tender.

One day, George's wife called Dicky and told him that the police had just been to their home and arrested George on suspicion of bribery. Upon hearing this, Dicky immediately couriered a box file of financial records to his solicitor Nicholas for the latter to advise Dicky on the next course of action.

Little does Dicky know, police officer Kenny had secretly tapped his phone for about 6 months, and had been listening to his telephone conversations, including some of his incriminating conversations with George. Authorisation under the Interception of Communications and Surveillance Ordinance (Cap 589) had not previously been obtained.

At the trial of Dicky for a corruption offence, Nicholas claims that

- (a) the box file of financial records is inadmissible because it is protected by privilege, and (4 marks)
- (b) the evidence of police officer Kenny should be excluded by the Court through exercising its discretion. (6 marks)

Evaluate whether these arguments are viable.

Question 4 (10 marks)

David and Johnny are charged with unlawful trafficking in cocaine, contrary to section 4(1) of the Dangerous Drugs Ordinance (Cap. 134).

At trial, Johnny pleaded guilty. The Prosecution, in the course of cross-examination, asked David the following questions:

Prosecution: *"Your friend had pleaded guilty. Do you know this?"*

David: *"Yes."*

Prosecution: *"He said you were the real seller persuading him to sell?"*

David: *"No."*

- (a) Was it permissible for the Prosecution to do so? (3 marks)**

Under cross-examination, David denied that he was selling drugs but baby powder instead. He admitted that he developed a romantic relationship with a girl called Bianca over the internet. He claimed that, at all material times, he was merely helping her advertise the baby powder. He also referred to a photograph of Bianca holding a can of baby powder, on which the date of the WhatsApp image appeared on the image.

- (b) Is the photograph admissible? If not, what else must be established to render it admissible? (7 marks)**

Question 5 (10 marks)

- (a) Briefly explain the rule against prior consistent statements, and the recent complaint exception. (6 marks)**

- (b) Evidence of recent complaint and distress may be used in the proof of a sexual offence. Briefly explain their differences. (4 marks)**

- End of Examination Paper -