

PCLL CONVERSION EXAMINATION JUNE 2021

Title of Paper : Evidence
Date : 30 June 2021
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 2021

Evidence

Question 1 (10 marks)

‘The general rule at common law is that witnesses may only give evidence of facts of which they have personal knowledge. In other words, witnesses may testify only as to what they themselves did, said or witnessed. This cardinal rule provides the foundation not only for the hearsay rule, but also for a further common law rule that prohibits witnesses from expressing their opinions about what happened or may have happened.’ (Dennis, *The Law of Evidence*, 6th Edition, (Sweet & Maxwell, London 2017.)

Discuss and comment with reference to criminal trials. **(10 marks)**

Question 2 (10 marks)

Peter and Tom are charged with theft. At the trial, Peter chose not to give evidence. When cross examining the victim, Peter’s counsel put to the victim that she had fabricated her evidence against Peter because she was still harbouring deep resentment and animosity towards Peter over a ferocious argument that they had had about the efficacy of COVID vaccines.

During the trial, Tom chose to give evidence in his own defence and claimed that he could not have been involved in the theft because he was volunteering to feed the hungry at the Sikh temple in Happy Valley. He also said that since childhood, his parents had ingrained in him the virtues of generosity and telling the truth and that as a religious person, he was incapable of telling a lie.

Peter has a prior conviction for theft and Tom has a previous conviction for assault.

Discuss the evidential issues that arise. **(10 marks)**

Question 3 (10 marks)

Peter is a sports car enthusiast. Last year, Peter purchased a motor vehicle insurance policy (“the Policy”) for his Porsche 911 (“the Car”) from AZA Ltd (“AZA”). A few months ago, the Car caught on fire and it was so badly burnt that it had to be written off. When Peter made a claim under the Policy, AZA refused to pay and alleged that Peter had committed arson to claim the insurance money. Subsequently, Peter sued AZA on the Policy. You are a solicitor, and you act for Peter.

- a) Peter asks you about the burden and standard of proof in his case against AZA. Advise him. **(4 marks)**

- b) A few weeks before the fire, Peter wrote a letter to you informing you that his business had been devastated by the COVID pandemic and that as a result, he was experiencing great financial difficulties. In his letter, he asked you about the scenarios under which he

would be able to obtain the insurance monies from the Policy. Advise Peter whether he can claim privilege in respect of the letter. **(6 marks)**

Question 4 (10 marks)

There has been a spate of burglaries in the student residence halls at Kowloon Tong University during which several mobile phones were stolen from the residential quarters. Police suspect that the burglaries were committed by John and Charlie who live in a nearby housing estate. In an under-cover operation carried out at the playground of the housing estate, Police Officer Wong ("PC Wong") sat next to John and without revealing his identity, marvelled at the new model mobile phone that John was holding. John told PC Wong that if he were interested, John could get a similar mobile phone for PC Wong at a discounted price. PC Wong agreed. They met again in the park the following morning where John handed over a mobile phone to PC Wong for \$3,000. Whilst checking the phone, PC Wong matched the mobile phone's unique IMEI number to a phone that had been reported as being stolen two weeks ago. PC Wong then arrested John for dealing in stolen property.

A few minutes later, another police officer, PC Chan, carried out an illegal search of Charlie's flat at the housing estate and found various tools that the police allege were used to break into the dormitory at Kowloon Tong University.

Advise on the admissibility of the evidence against John and Charlie. **(10 marks)**

Question 5 (10 marks)

- a) John was arrested and charged with theft. At the time of John's arrest, his wife Amy told the arresting officer that she witnessed John committing the theft. Later, Amy signed a statement repeating the same. However, at the trial, she refused to testify against John. Advise Amy whether she is competent and/or compellable to testify for the prosecution. **(4 marks)**
- b) David and Peter are jointly charged with indecent assault on their co-worker, Carrie. At trial, the prosecution wishes to call Peter as a prosecution witness against David. Can the prosecution call Peter as a prosecution witness? **(3 marks)**
- c) In 2015, Tony was sentenced to 14 days of imprisonment for illegal gambling. It was his first conviction. Since his release from prison, he had tried to lead a law-abiding life and had not been convicted of any other offence. However, in early 2021, Tony was arrested for burglary. At his trial, the prosecutor wishes to cross-examine Tony about Tony's previous conviction for illegal gambling. Can the prosecutor do so? **(3 marks)**

~ End of Examination Paper ~