

PCLL CONVERSION EXAMINATION JUNE 2020

Title of Paper : Evidence
Date : 19 June 2020
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 2020

Evidence

Question 1 (10 marks)

John works for “Alvins” Hong Kong wine merchants as a delivery driver. John’s boss Alec tells John he has just received a special order of 500 bottles of quality champagne to deliver to Sally who owns a restaurant in Central. The following day, John loads up his van with the champagne and tells Alec’s secretary Daisy he is on his way to drop off the consignment at Sally’s restaurant. Daisy, who is responsible for record keeping generally with regard to sales, makes a handwritten note of the 500 bottles of champagne in the delivery book based upon what John tells her.

John drops off the champagne at Sally’s restaurant, and when he has completed his other deliveries he drives back to work with his lorry empty. Unfortunately, John is killed in an accident at a busy junction when he is walking back home after leaving work that day. Three days later Sally phones Alec to say that the delivery by John only contained 400 bottles of champagne.

Later that week, acting on information received and executing a search warrant, police visit Bill’s apartment where they discover 100 bottles of the same brand of champagne that was delivered to Sally’s restaurant. Bill protests his innocence saying he had nothing to do with stealing the champagne, but he is arrested and ultimately charged with the theft.

Advise on the following points of evidence at trial:

- (i) Can the prosecution rely on Daisy’s diary entry in order to prove that 500 bottles of champagne were initially loaded onto the delivery lorry before John set off?
(4 marks)
- (ii) Can the prosecution introduce into evidence details of Bill’s previous conviction from 2010, when he was given a six-months prison sentence for stealing a laptop computer from his employer?
(6 marks)

Question 2 (10 marks)

Mike and Susie are university students. One night they get together at Susie’s apartment in Wanchai in order to work together on a class project. During the evening, they drink some wine and at some point Mike forces himself upon Susie, by grabbing her, pinning her down and trying to remove her clothing. Susie manages to escape from Mike’s grip and runs next door to see her neighbour Debby. Debby sees Susie in floods of tears and says, “what on earth is wrong?” Susie shouts to Debby, “oh my goodness, Mike just tried to rape me”.

Susie gives a statement to police on the same evening as the incident. Mike is charged with attempted rape and denies the allegation, saying that Susie has fabricated the whole thing, because Mike ended his relationship with Susie twelve months before, and he is now dating someone else.

At Mike's trial for attempted rape in the Court of First Instance, the following events occur:

- (i) The prosecutor says to Susie in examination in chief, "it might be suggested by the defence in cross-examination that you have made this whole incident up from the beginning, what do you say to that". In reply Susie says, "No I certainly did not, Mike tried to rape me and I even told my friend Debby at the time exactly what had happened".
(5 marks)
- (ii) Mike gives evidence in his defence and whilst in the witness box, in response to a question from his own barrister about the incident says, "Susie has a habit of making up these type of stories. My friend Eric told me that when he was her boyfriend two years ago, she made an accusation that Eric had indecently assaulted her, which turned out to be completely untrue." Eric is not being called as a defence witness and has not given a statement.
(5 marks)

Discuss the evidential issues that arise under both (i) and (ii) above.

Question 3 (10 marks)

Alex has been charged with assaulting Brian. The prosecution allege that Alex and Brian had been arguing over money in a restaurant in Central, when Alex suddenly punched Brian in the face. Alex was arrested the following day and told police in his interview that he was acting in self-defence, because he could see that Brian was about to stick a sharp plastic knife into his arm. Brian denied this and said that the punch from Alex was unprovoked. Alex's wife Carina who was sitting next to Alex witnessed the incident, and supports what Alex has said. In addition, just after the incident, another customer Delia came up to Alex and told him that her eight-year old daughter Elly had seen the whole thing. Elly told her mother that Brian had a knife in his hand just before he was punched by Alex. Alex's defence team wishes to call both Carina and Elly to give evidence on his behalf.

- (i) Carina is a little anxious of giving evidence in court because 10 years ago she was convicted of careless driving and believes that the prosecution might refer to this at Alex's trial.
(5 marks)
- (ii) Elly is quite young for her age, but has been taught in Sunday school that it is important to tell the truth. She is also nervous about going to court, but has agreed to do so on behalf of Alex.
(5 marks)

Discuss the evidential issues that arise under both (i) and (ii) above.

Question 4 (10 marks)

There are occasions in a criminal trial where a witness may be excused from personal attendance and their evidence may simply be read out to the court, as if they were present in person.

Explain when this is likely to occur and what are the procedures for evidence being dealt with in this manner?

Question 5 (10 marks)

PC Chan was on duty late one night during the Hong Kong protests. As a result of a call on his radio, he went to investigate an arson attack on Admiralty MTR station. As he got to the scene he saw a suspect dressed in a white T-shirt with a very unusual dragon design, carrying a blue and yellow rucksack, running away from a small fire inside the MTR entrance. PC Chan chased after the suspect but lost sight of him. Two weeks later as a result of an appeal by police for witnesses, David Wing (“Wing”) is arrested at his apartment in Causeway Bay. His apartment is searched and police take away a very unusual dragon design T-shirt and a blue and yellow striped rucksack. Inside the rucksack pocket there is a cigarette lighter and fuel.

PC Chan prepares a statement based upon his notes immediately after Wing has been arrested.

In interview, Wing denies being anywhere near Admiralty on the night in question, but is ultimately charged with arson based upon the police evidence of the clothing and rucksack and its contents, plus other witnesses. Wing will plead not guilty at trial, which takes place 9 months after the incident.

Advise on the following evidential points, which occur at Wing’s trial:

(i) When PC Chan goes into the witness box he starts to give evidence. However, it soon becomes clear that he has forgotten some of the finer details of what he saw that evening, in particular when describing the appearance of the suspect he pursued. PC Chan requests to be allowed to refer to his statement in court whilst he is in the witness box, to help him remember things more clearly. Will this request be allowed?

(6 marks)

(ii) Would it make any difference to your answer under part (i) above, if PC Chan had already once read his statement before he went into the witness box whilst waiting outside the court?

(4 marks)

~ End of Examination Paper ~