

PCLL CONVERSION EXAMINATION JANUARY 2022

Title of Paper : Evidence
Date : 12 January 2022
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 January 2022

Evidence

Question 1 (10 marks)

Alan is charged unlawful wounding outside a nightclub in Central. He is now appearing at trial in the District Court. He is pleading not guilty on the basis of his alibi (that he was at home with his girlfriend at the time). The Prosecution have a number of exhibits they wish to produce: i) a 5-inch kitchen knife, found in a bin at the rear of the night club where the attack took place. They also have ii) a book of 12 photographs of the location and a statement from the police photographer, iii) signed statements from two forensic experts adducing fingerprint and DNA evidence (neither matching or connected to Alan), and iv) a statement from the arresting officer detailing the date and time of Alan's arrest and that in reply to caution "D remained silent". Both Prosecution and Defence are agreed that Alan has no previous convictions.

The prosecution also has witness statements from various officers who retrieved the exhibits and passed them on to the government forensics experts for analysis constituting 'the chain of evidence'.

Counsel for Alan has indicated that none of these exhibits, statements or photographs is going to be challenged by the Defence, the Prosecution chain of evidence is agreed in respect to these items, as is Alan's clear record.

Explain who will produce this evidence and the procedure by which it will be adduced in court.
(10 marks)

Question 2 (10 marks)

Brian is 39 years old and a post-graduate law student currently studying in Canada. Upon his return for Chinese New Year last year, he was charged with possession of indecent images of children that were discovered on his computer and reported to police by staff at the Wan Chai Computer Centre, where he took it for a screen replacement. He is now charged and alleged to have had over 11,000 indecent images on the hard-drive of his computer and evidence that he has shared some of these images with friends in Hong Kong. It is an agreed fact that D also has two previous convictions for indecent assault (i) on a 15 year-old girl (squeezed her breast) in December 2001 and (ii) on an adult female on the MTR (rubbed her bottom) in January 2005 for which he was respectively, for (i) given 12-month probation for the first offence and (ii) received 6-weeks imprisonment for the second offence.

At trial Brian chose to give evidence. In answer to questions by his Defence Counsel, Brian told the jury, *inter alia*, that he had obtained his law degree in 2019 and completed his PCLL in 2020. He was now studying a post-graduate course in commercial law in Canada before starting a training contract with a Hong Kong law firm in 2023. In denying the offences, Brian added that as a devout Christian he remained a virgin and had a long-term girlfriend (also a virgin and devout Christian) and both took seriously their religious vows not to engage in sex before marriage.

Prosecuting Counsel, aware of Brian's relevant previous convictions wishes to object to this evidence. (i) Explain the procedure and grounds for the Prosecution's objections and (ii) set out what options the trial judge has to deal with this matter.

(10 marks)

Question 3 (10 marks)

Colin and Derek were arrested on suspicion of committing an attack on a taxi driver (AOABH s.39, (Cap 212) in Yuen Long. Both were taken to Tsuen Wan police station where they were interviewed separately.

Colin asked to see his solicitor but his request was refused by the police on the ground that waiting for his solicitor would cause unreasonable delay to the investigation. Colin claims that an unknown police officer came into his cell with the arresting officer, pushed him against the wall and grabbed him by the throat, saying "don't mess us around you cockroach, you know what you did". Colin later, further claimed, when the police told him that Derek had confessed (and had implicated Colin) that he reluctantly also confessed.

Colin then made a taped statement in which he admitted his part in the attack on the taxi driver but claimed it had all been planned by Derek. In fact Derek had not made any confession and had maintained his silence throughout his interrogation.

Both men now stand jointly charged with AOABH.

Before the trial a *voir dire* is held to determine the admissibility of Colin's confession. On the assumption that the trial judge accepts Colin's account of what happened during his interrogation, prepare an argument to support the *exclusion* of his confession using supporting case law.

(10 Marks)

Question 4 (10 marks)

It has been said that the question of bad or good character, is not simply a matter of the presence or absence of previous convictions, nor is it the same as reputation, though the one may be evidence of the other.

1. Explain how a criminal court would approach the question of character evidence in a criminal trial generally.
2. What likely directions would a trial judge give to the jury in a case where the defendant (aged 68) has given evidence from the witness box during his trial for robbery? He is of positive good character save for a conviction for theft (shoplifting some kitchen utensils) from Ikea 40 years ago.

(10 Marks)

Question 5 (10 marks)

Azan was a local burglar and thief, well known to the local police. He had been arrested and charged on numerous earlier occasions (more than 30 such arrests), all for burglary, and he has 15 previous burglary convictions. Every single one of them involved theft of Indian gold jewellery from Indian families. All of Azan's convictions involved him climbing up the drainpipe of houses belonging to Indian residents and breaking in either through top floor windows or the roof. He would specifically target Indian households because he knew that many Indian families often collected 'pure gold' jewellery. Azan would often identify houses by disguising himself as an "Deliveroo" delivery driver, pretending to delivery packages to houses first to see if anyone was at home but mainly to find an excuse to put his nose to the letterbox to see if he could smell Indian cooking – if he did then he would come back later to enter the premises in the likely expectation that valuable Indian gold and jewellery would be inside.

Last month Azan was stopped in his van wearing a sweatshirt with "Deliveroo" written in large letters on the front and back. He was parked outside 15 to 17 Lettsbe Avenue, which is a street largely populated by wealthy Indian and Asian residents. No gold or other items were found on Azan or in his van but both the houses at 15 and 17 were found to have had their top-floor, rear windows, broken.

Azan has been charged with two attempted burglaries. The Prosecution wish to adduce 'similar fact' evidence during the trial. The Defence argue that allowing the Prosecution to do so would have a prejudicial effect that outweighs its probative value.

Discuss.

(10 Marks)

~ End of Examination Paper ~