

## **PCLL CONVERSION EXAMINATION AUGUST 2022**

Title of Paper : Evidence  
Date : 25 August 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 August 2022

## Evidence

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

Common sense would suggest that, in a criminal trial, it would be favourable to a client's case to produce evidence of a previous statement made by one of his/her witnesses which is consistent with the evidence he or she now gives. If that earlier statement was made shortly after the events it describes, then it might be quite compelling corroboration of the present testimony. However, the rules of evidence severely restrict a Defendant's ability to rely on previous consistent statements.

- (i) explain this rule generally **and**
- (ii) state the four main exceptions to this rule and *briefly* explain each one.

**(10 marks)**

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

You are the lawyer in a criminal trial and asked to represent a Defendant (D) who is charged with one count of Indecent Assault on Child A.

In the trial there is no *direct evidence* that the defendant committed the offence charged (i.e. Indecently Assaulted child (A) or any of the similar offences (i.e. Indecent Assaults on Child (B) & Child (C)).

However, the Prosecution have been given leave to adduce similar fact evidence suggesting the commission of a number of other similar offences (i.e. Indecent Assaults on Child (B) & Child (C)) all of which the defendant *had a clear opportunity* to commit on the facts and, (as was the case with child (A)) in each case offered each child a box of "jelly babies" before taking them to Kowloon Park and, whilst there, indecently assaulting them.

Citing relevant authorities, discuss the principles upon which the courts in Hong Kong may allow such similar fact evidence to be admitted.

**(10 marks)**

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

A witness is competent to give evidence if he may be lawfully called to give evidence. A witness is compellable if he may lawfully be obliged to give evidence. In the modern law of evidence, almost all persons are competent to give evidence. Most persons who are competent to give evidence are also compellable.

However, the position of some groups or classes of people are said to be not competent or compellable or both. Explain why in relation to:

- i) Accomplices
- ii) The spouse of an accused in a criminal trial

(10 marks)

**Question 4 (10 marks)**

As Lord Reid pointed out in *Myers v DPP* [1965] AC 1001, 107, 'it is difficult to make any general statement about the law of hearsay which is entirely accurate'. The rule against hearsay has proved difficult to define with precision because of the large and varied number of exceptions to this rule.

- (i) Give a brief definition of the basic hearsay rule

and then explain how each of the following examples are generally considered to be exceptions or partial exceptions to the basic hearsay rule.

- (ii) Dying Declarations
- (iii) Res Gestae
- (iv) The Opinions of Qualified Experts

(10 marks)

**Question 5 (10 marks)**

Alan, Brian and Colin worked as storemen at the Swiss Watch Company, in Mong Kok.

Each was charged with two counts, relating to the theft of "Swiss Watches"

Count 1 Obtaining Office Key by Deception;  
Count 2 Theft of 20 "Swiss Watches".

Alan and Colin pleaded not guilty to Count 1. They all pleaded not guilty to Count 2 but Brian (only) pleaded guilty to Count 1, namely, obtaining office keys by deception.

Keith, the manager of the store gave evidence for the prosecution, stating that the three men obtained the store keys without permission to perpetrate the theft of the watches Further, that they were all in the store room on the evening that the Watches allegedly "disappeared".

Alan testified for himself. He claims that Brian had suggested to him, at Kung Fu practice, that there was a lucrative black market for these "Swiss Watches" and that it could be Brian who stole them. He called Father O'Keef, his Catholic priest, to say that he is an upstanding member

of the parish. Alan, however, has a spent conviction for criminal damage to his neighbour's car when they had a dispute over parking space ten years ago.

Brian has no previous convictions save for his plea to Count 1. He did not testify. His counsel has cross-examined Keith about a conviction which he had for failing to pay his MTR fare while he was a student at Chinese University in 1995.

Colin testified and claimed that he knew nothing about the theft. He said he is a suspect only because Keith would like to see him sacked, as he has been secretly dating Keith's girlfriend behind his back and Keith only recently became aware of this. Colin has several convictions for shoplifting.

Judge Kwok has referred to Colin's convictions briefly and asked the jury to take note of Alan's good character. Alan is acquitted, Brian and Colin are convicted.

Advise on the evidence in the proceedings.

**~ End of Examination Paper ~**