

PCLL CONVERSION EXAMINATION JUNE 2022

Title of Paper : Evidence
Date : 27 June 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 June 2022

Evidence

Question 1 (10 marks)

When a party to the trial calls a witness to testify, the process of examining that witness is known as examination-in-chief. Examination-in-chief proceeds by way of counsel for the party who called the witness, asking the witness a series of questions designed to elicit the testimony of that witness. As a general rule, counsel conducting the examination-in-chief of a witness may not ask that witness a leading question.

- i) In a *criminal trial*, outline the process by which both counsel for the prosecution and defence must adduce “evidence in chief” from their respective witnesses, using examples of leading questions, explain why leading questions are, generally, prohibited when adducing evidence in chief in a criminal trial.
- ii) However, if the rule relating to leading questions was applied strictly and in relation to all aspects of examination-in-chief, much inconvenience and difficulty would be created. As a result there are a number of exceptions to the rule. Some of the exceptions are not, strictly speaking, exceptions. They are rules of practice or convention. The way in which the exceptions are permitted and the extent to which they are permitted are always subject to the discretion of the trial judge.

Giving examples, outline some of these exceptions.

(10 marks)

Question 2 (10 marks)

First, give a brief definition of the hearsay rule in a single paragraph.

Second, consider each of the following **five** examples (1-5) of the hearsay rule’s application. In each case, give brief reasoning, and state whether the evidence *is hearsay* or *is not hearsay*, on the facts of each of the five examples.

1. In an action for slander brought by C against D, C calls X who says in the witness box “I heard D say to the meeting “C is a thief - he stole HK\$100 from the charity”. C relies on this evidence not to prove the truth of the assertion that C is a thief but to prove that the words of which he complains were spoken.
2. In the same action, D calls Z who says in the witness box “I can verify that C is indeed a thief. Y told me only last week that he saw C with his fingers in the till”.
3. The Manageress of a sauna and massage parlour was charged with acting in the management of a brothel. To prove that premises were used as a brothel it is sufficient to prove that more than one woman offers sexual services. It does not matter whether the statement that the services will be provided is true or not. It is the fact that the offer is made that is important. Plain clothes PCs pretending to be customers gave evidence in court for the Prosecution that they had been offered various sexual services.

4. The making of the statement is said to be relevant to the state of mind of the maker which in itself is a fact in issue. The fact in issue is whether, at the time X made his will, X had testamentary capacity. Y wants to call evidence that at the time X made the will X went around dressed as Hitler, shouting “I am Hitler”.
5. An implied assertion is a statement or conduct from which it is possible to infer a particular fact. Police suspected X of dealing in drugs. They searched his flat but found only small quantities of drugs on the premises. However, while they conducted the search the police took ten telephone calls from people asking for X to sell them drugs and in two cases asking for “the usual quantity”. The trial judge considered the evidence of a request for drugs to be relevant to the question whether X was a drug dealer and was therefore admissible. Is this correct?

(10 marks)

Question 3 (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 evidence of a defendant’s good or bad character in a criminal trial.
2. What likely directions would a trial judge give to the jury in a case where the defendant (aged 75) 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) from Park n Shop 30 years ago.

(10 marks)

Question 4 (10 marks)

D was charged with wounding with intent contrary to s.17 OAPO (Cap 212). The Prosecution called 5 witnesses and relied on a set of ‘Admitted Facts’ including several CCTV video clips and still photographic images taken from the CCTV. At the close of the prosecution case the only issue before the jury was identification. Briefly, the victim Mr. Wong (PW1) was attacked outside his restaurant in Chun King Mansions by a man, who covered his face with a COVID facial mask. The relevant medical report of PW1 showed serious lacerations to his arms and hands. This was supported by the CCTV evidence which clearly showed the attack, whereby a man fitting D’s description can be seen to approach PW1 with a large knife and proceed to chop him several times.

The Prosecution case is that the man in the CCTV is clearly identifiable, showing his build (fat and clearly overweight); his height (c.1.75 metres); his skin colour (a man of South Asian descent); and the general features of the offender (his dark eyes and short black hair colour).

The Defendant in the dock matched this description in every respect.

You are asked (i) to explain the law in relation to identification evidence *on the facts of this case* and, in your answer, (ii) indicate the appropriate directions the judge should give to the jury (in particular in relation to identification evidence), before they retire to consider their verdict.

(10 marks)

Question 5 (10 marks)

The criminal justice system in Hong Kong depends on witnesses being prepared to come forward to testify about what they have seen, heard or experienced. Where those witnesses are:

- (a) said to be ‘in fear’ of giving evidence or are children that have been subject, *inter alia* to criminal acts of cruelty or sexual abuse or
- (b) adult victims who have gone through some form of ordeal following criminal conduct

It is often necessary for the court to make arrangements for such witnesses to testify so as to minimise the embarrassment, trauma or anxiety of the experience of giving evidence in court.

Outline the steps a court *may* take to admit the evidence of such witnesses in (a) and (b) above.

(10 marks)

~ End of Examination Paper ~