

## **PCLL CONVERSION EXAMINATION JANUARY 2021**

Title of Paper : Evidence  
Date : 6 January 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 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 2021

## Evidence

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

- (a) It is alleged by the prosecution that Sean, who has been charged with manslaughter of his fiancée Anne, got into a violent argument with Anne and in an outburst of anger, Sean stabbed her. Consider the admissibility of the following evidence:

Thomas, an ambulanceman, administered first aid to Anne in the ambulance on the way to the hospital. Before succumbing to her injuries, Anne said to Thomas, “**It was Sean who did it; I’m not going to make it. Tell my family to scatter my remains in the Victoria Harbour**”.

**(6 marks)**

- (b) John and Christian are charged with robbing a jewellery shop in Mongkok. As John and Christian were running into the getaway car parked outside the jewellery shop, Clarissa, a passer-by, heard John yelling the following statement to Christian; “Christian, did you make sure you took all the diamond necklaces from the display in the back of the shop?”.

At trial, the prosecution wishes to adduce John’s statement to prove Christian’s involvement in the robbery. Advise the prosecution as to the admissibility of the statement.

**(4 marks)**

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

Jack was arrested and charged with indecently assaulting a 10-year-old named Stephanie at a playground. As a result of the incident, Stephanie has become depressed and often wakes up in the middle of the night screaming and complaining of nightmares. Her psychologist thinks that although she is a strong-minded child who feels aggrieved by the actions of Jack and she wants to testify against Jack to ensure he is punished; her depression and anxiety is nonetheless linked to the fear of possibly having to face Jack during the upcoming trial.

- (a) Discuss whether Stephanie is a competent and compellable witness.

**(4 marks)**

- (b) As the prosecuting counsel, what are the procedures available to you that would allow Stephanie to give evidence at the trial without having to face Jack directly in the same courtroom?

**(6 marks)**

**Question 3 (10 marks)**

*“The law relating to similar fact evidence seeks to strike a balance between admitting evidence which is relevant to the charge being levelled against an accused and excluding evidence which is too prejudicial to the accused.”*

Critically examine the above statement.

**Question 4 (10 marks)**

Craig lives in Fairwood Park, a gated residential community in the New Territories. He is a member of the residential community’s neighbourhood watch programme (an organized group of civilians devoted to crime and vandalism protection). Whilst on patrol one night at around midnight, Craig saw a young male dressed in a dark T-shirt and shorts, carrying a big backpack and acting suspiciously near the wall of one of the houses in the residential community. Upon seeing Craig, the young man started running. Although Craig gave chase, he soon lost sight of the young man. Craig immediately took out his notebook (given to and carried by each member of the neighbourhood watch) and made a detailed written record of the whole incident. He then called the police and informed them of the event.

About an hour later, a young man fitting the description provided by Craig was arrested near Fairwood Park. The young man, named Charles, was charged with burglary because police found several allegedly stolen items in his backpack at the time of the arrest.

Advise Craig on the following evidential matters:

- (a) Craig wishes to refresh his memory from his notebook outside court before giving evidence for the prosecution at the trial. Can he do so?  

**(3 marks)**
  
- (b) (i) Can Craig refresh his memory from his notebook whilst giving evidence in court?  

**(3 marks)**
  
- (ii) Would your answer be different if Craig had made the note in his notebook the next morning at 8 a.m. instead?  

**(4 marks)**

**Question 5 (10 marks)**

The prosecution allege that Derek attempted to murder Patrick in a side street adjacent to a pub and just across the street from the building where Derek works. The alleged attack occurred at 11 p.m. The police have the following witnesses to the alleged offence:

- (a) Fiona, an off-duty police officer, says that she went into the side street to get some fresh air and saw Derek attacking Patrick, who was lying on the ground. Earlier, Fiona had witnessed Derek and Patrick having a heated argument in the pub and she decided to keep an eye on them. However, she lost sight of them when she went to get a round of

drinks and only saw them again when she went out into the side street later. When she saw the attack, she yelled at Derek and gave chase, but he ran away. Although it was late at night, the side street was poorly lit and she was about 10 metres away when she saw Derek attacking Patrick. Fiona is adamant that the attacker was Derek.

**(6 marks)**

- (b) Tony lives in one of the apartments opposite the side street and was watching TV at the time of the attack. He says that he heard a commotion, went to his window and saw a black-haired Asian man in his 20's punching and hitting another man. Tony is 82 years old; he is short-sighted and has had two eye operations in the last year. Tony was unable to pick Derek out at an ID parade which was held about a week after the incident. Derek is 50 and has blonde hair.

**(4 marks)**

Advise the prosecution as to the admissibility of the identification evidence above.

**~ End of Examination Paper ~**