

PCLL Conversion Examination
June 2017
Examiner's Comments
Evidence

Question 1

This question was generally answered to a satisfactory standard. Most candidates identified that the main issue in relation to the way in which the evidence had been obtained was how it might prejudice a fair trial for Anthony, and what (negative) role it might have on fairness. The point of course is that the court has discretion to exclude evidence unlawfully obtained. Relevant also is the balance between the prejudicial effect of relying on evidence unlawfully obtained, and the probative value of that evidence. The broader public interest in admitting the evidence is also relevant. Some candidates were rewarded for a discussion of fundamental rights as they related to the facts.

Question 2

The relevance and accuracy of the answers given to this question varied greatly. Candidates should have identified the risk to the defendant's shield, and should have discussed the relevant provision in the Criminal Procedure Ordinance. The judge seems to have intervened to prevent Mandy losing the shield. However, there is a question about whether the facts relate to the "conduct of the defence", and whether she has already gone too far with her accusations and lost the shield. A number of candidates were far off the mark in this question, such as a discussion of oppressive questioning or hostile witnesses.

Question 3

This question was generally answered satisfactorily. Most candidates successfully explained what it means for a court to take judicial notice in the law of evidence, and in what circumstances would judicial notice be likely to occur. However, several candidates failed to answer the other parts of the question: what is the rationale behind judicial notice, and can a party challenge a fact of which judicial notice has been taken, and if so, in what circumstances? Candidates were rewarded for the relevance, accuracy and clarity of their answers.

Question 4

While some candidates did well on this question, a considerable number did not. Specifically, a concerning number of candidates failed to identify the proceedings as civil in nature. This was clear from the facts of the question, with there being a contract for sale, breach of contract etc. Several students used wholly inappropriate terminology in their answers, such as references to the prosecution and guilt. It was clear either that a number of candidates failed to understand the very basic distinction between civil and criminal law, or that candidates had paid inadequate attention to the facts and rushed into an answer. The civil nature of the proceedings was key for the question, as hearsay is permitted in civil proceedings subject to qualifications. There are also guidelines in the

Evidence Ordinance for the courts to use in weighing hearsay evidence in civil proceedings. A number of students jumped to the (wrong) conclusion that, because the statement was hearsay, and there is a general rule against hearsay, it would likely be inadmissible.

Question 5

Candidates generally answered this question to a satisfactory standard. Many correctly identified that evidence given by a child is admissible, but that the main issue is reliability. Candidates were rewarded for discussing the reliability of evidence given by a child, including the provisions relating to evidence given by a child in the Evidence Ordinance. Some candidates also discussed measures which can be taken to reduce the stress and negative effect of a child testifying in proceedings, such as video recordings and live link evidence.