

## **PCLL CONVERSION EXAMINATION JANUARY 2015**

Title of Paper : Evidence  
Date : 9 January 2015  
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 3 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 2015

## Evidence

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

Dan and Doreen are adult brother and sister living together with their mother in Kwai Chung. Over the course of several months the relationship between Dan and Doreen became increasingly strained but there was no violence and no threats. This state of affairs between Dan and Doreen continued although at one point Dan told his best friend Dixon that he was going to kill Doreen. After this statement was made by Dan he did in fact inflict one fatal blow to Doreen's head while they were at home together which resulted in Doreen's death. Dan's statement to Dixon was made approximately ten minutes before he struck the blow to Doreen. Dan is now charged with the murder of Doreen. Consider the admissibility into evidence of the statement that Dan made to Dixon.

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

Contrast the concept of relevance with the concepts of admissibility and weight of the evidence?

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

Alan and Benny are indicted on one joint count of indecent assault on a 14 year old girl. Alan's wife Rose was interviewed by Inspector Wong under caution and stated that she had witnessed the assaults. A written statement was given by Rose that confirmed what she witnessed and which she signed. Rose was not charged in relation to the offences but she was given a subpoena and agreed to testify for the prosecution in the joint trial of the two accused. It is three weeks before the trial and Rose now refuses to testify. You are in private practice as a solicitor doing mainly criminal work and are consulted by Rose. Rose informs you that she has been seeing a psychiatrist for the last two years. She has consulted you because she wishes to know whether she is competent and/or compellable to testify.

### **Question 4 (10 marks)**

The burden and standard of proof are central components of the law of evidence. These components find expression in both case law and statute law. In this regard, article 87 of the Basic Law of the HKSAR states in part: "[a]nyone who is lawfully arrested shall... be presumed innocent until convicted by the judicial organs."

Discuss the meaning of this excerpt from article 87 in the context of the burden and standard of proof.

### **Question 5 (10 marks)**

Albert is charged with procurement contrary to **section 120** of the Crimes Ordinance. The procurement is alleged to have been upon Michael, a 13-year-old boy. Shortly before the act

complained of Michael was in a local park playing with a radio controlled toy car. At that time an older man approached Michael and said to him that he had a large collection of similar toy cars at his flat nearby. Michael agreed to accompany the man to his flat but while they were walking together the man made improper suggestions to him. Michael heard the suggestions and ran and after a short while he encountered a police officer who took him to the local police station. A police officer called Michael's father who came to the station. At the station Michael gave the police a brief description of the man, a short summary of what had occurred and then left in the company of his father. The next day Michael was asked to return to the police station and view an identification parade with six suspects. Michael reluctantly picked Albert out of the parade as the person. The police had an incident report from another boy named Gord who had complained that he had been in another park one week before Michael was approached when he was pestered by a man who asked Gord if he wanted to see his collection of toy cars. Later, at the police station Gord was called back and asked to view a separate identification parade from Michael. At the parade Gord was able to easily identify Albert as the man in the park who approached him. Unknown to the police Michael and Gord attend the same school although Gord is four years older than Michael. Both boys knew of rumours that a man was thought to be molesting boys near the school but neither of them believed the rumours to be true. When Albert's flat was lawfully searched by the police no radio controlled toy cars were found although the police did find some magazines containing nude photos. Albert denies meeting Michael or Gord and says that they must be mistaken in their accounts. Advise the prosecution on the evidentiary issues.

**~ End of Examination Paper ~**