

## **PCLL CONVERSION EXAMINATION JANUARY 2016**

Title of Paper : Evidence  
Date : 8 January 2016  
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 2016

## Evidence

### **Question 1 (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:

(i) 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

(ii) 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 (i) and (ii) above.

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

D, a law student at HKU is charged with trafficking in dangerous drugs. He is alleged to have supplied four fellow students with small quantities of cocaine. It is an agreed fact that D also has two previous convictions for possession of dangerous drugs (i) for a small quantity of cannabis in March 2014 and (ii) for a small quantity of cocaine in January 2013 for which he was respectively, for (i) fined and for (ii) received a Community Service Order.

At trial D chose to give evidence. In answer to questions by his Defence Counsel D told the jury, *inter alia*, that he was a law student and hoped to go into practice as a solicitor. He added that as a devout Christian he had always been against drug use and had in the past volunteered to work in a charitable drug rehabilitation unit in Wan Chai.

Prosecuting Counsel, wishes to object to this evidence. (i) Explain the procedure and grounds for the Prosecution’s objections and (ii) set out what options the trial judge has to deal with this matter.

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

In a number of cases, uncharged evidence of the accused’s misconduct on previous, earlier occasions has been admitted, notwithstanding that it reveals his or her criminal disposition, because of its high degree of relevance in establishing a particular and essential part of the prosecution case. Consider these two examples of such Prosecution applications:

(i) Alan is accused of committing a crime. He denies being in the neighbourhood where the crime was committed at the relevant time. During the trial the prosecution seek to admit evidence that he committed another crime in that area shortly before the offence charged. Such evidence, the prosecution argue, should be admitted not for the purpose of concluding that the

accused, because of his criminal disposition, is a person likely to have committed the present offence charged, but to establish that part of the prosecution case which is being denied by Alan in the trial - namely Alan is denying he was present in the neighbourhood at the relevant time.

(ii) Brian is charged with murdering child A. Brian lived with A, her mother and several other children of the family. During the trial, the prosecution sought to call evidence to show that the defendant had assaulted A on several previous occasions, that he had assaulted other children of the family, and that he had even attacked the dog that he kept as a pet.

Consider both examples (i) and (ii) above. First, explain for *both* Alan and Brian, the evidential basis for the prosecution's application generally. Second, having discussed this, in each case, say whether that application should be allowed *or* refused.

#### **Question 4 (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) outline the four main exceptions to this rule.

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

Give a brief definition of the hearsay rule and then consider each of the following **five** examples of its application. For each, give **very brief** reasoning, and state whether the evidence *is hearsay* or *is not hearsay*, on the facts of each example.

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\$10 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 Police Constables 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 Napoleon, shouting "I am Napoleon".

5. An implied assertion is a statement or conduct from which it is possible to infer a particular fact. Police suspected K 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 K 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 K was a drug dealer and was therefore admissible. Is this correct?

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