

PCLL CONVERSION EXAMINATION JANUARY 2017

Title of Paper : Evidence
Date : 9 January 2017
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**

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Evidence

Question 1 (10 marks)

What is the rule against hearsay? What is the rationale behind the rule? Give three examples of exceptions to the rule against hearsay and briefly explain the rationale for each of these exceptions.

Question 2 (10 marks)

John is accused of having assaulted Chris outside a nightclub in Lan Kwai Fong. Explain whether and to what extent the following witnesses could be called upon to give evidence at John's trial. For each witness, also state whether your answer would be different depending on whether the witness was being called upon to give evidence (i) in defence of John, and (ii) against John.

- a) Helen, who is John's wife.
- b) Martin, who is jointly charged with John of assaulting Chris.

Question 3 (10 marks)

Charles is accused of large-scale credit card fraud. Charles is the editor of a magazine called "Hacking Quarterly", and is known to have advanced knowledge of hacking computer hardware and software. At the present time, there is insufficient evidence on which to convict Charles, but the prosecution states that there is "strong public interest in preventing this highly knowledgeable hacker from causing further widespread disruption to the credit card system".

Charles has pleaded "not guilty" to the charge. Charles had previously, during a client meeting, told counsel representing him that he "managed to steal HK\$1 million last year by remotely manipulating credit card transactions". Counsel for Charles believes it would be in the public interest for this information to be revealed in court. Can counsel for Charles reveal Charles' confession to the court? Explain why / why not.

Question 4 (10 marks)

Explain in detail whether and to what extent memory-refreshing documents may be used by a witness in court.

Question 5 (10 marks)

Eric is accused of criminal damage to property by severely damaging his employer's office. The following dialogue takes place in court during the cross-examination of Eric:

- Prosecution: "You always hated that office, didn't you?"
- Eric: "No."
- Prosecution: "When you destroyed it, you were reliving your old dream, weren't you?"
- Eric: "No."
- Prosecution: "You hated your employer too, didn't you?"
- Eric: "Yes."
- Prosecution: "So you admit it! You destroyed the office."
- Eric: "I am confused."
- Prosecution: "Did you always hate your employer, or only before you destroyed his office?"
- Eric: "I didn't."
- Prosecution: "Answer my question! You hated your employer and you destroyed his office."
- Eric: "I don't know what to say."

To what extent is this line of questioning permitted? Would your answer be different if it was Eric's lawyer who asked the first three questions in the dialogue? Explain your answer.

~ End of Examination Paper ~