

PCLL CONVERSION EXAMINATION JANUARY 2018

Title of Paper : Evidence
Date : 9 January 2018
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 2018

Evidence

Question 1 (10 marks)

“The rule against hearsay evidence in criminal proceedings should be abolished”.

Critically evaluate the above statement.

Question 2 (10 marks)

David is a tennis coach who has been arrested and charged with one count of indecent assault. It is alleged that he sexually assaulted his student Chloe during one of their coaching sessions. Chloe is 11 years old. As a result of the incident, Chloe has become depressed and often has nightmares. Her psychologist thinks that her depression and anxiety are linked to the fear of possibly having to face David during the upcoming trial.

As the prosecuting counsel, what are the procedures available to you that would allow Chloe to give evidence at the trial without having to face David directly in the same courtroom?

Question 3 (10 marks)

Steven has been charged with one count of theft of a toy from the Aeyawn department store. During cross-examination, he says that he had put the toy in his own recycled plastic bag which he was carrying because he did not want to pay the plastic bag levy and because he did not want the toy to get wet since he was also buying some frozen food items (which he had placed in a separate store trolley). He claims that when it came time to pay, he paid for the frozen food items in the trolley but forgot to pay for the toy. He explains that he forgot to pay for the toy because whilst he was standing at the cashier counter, he was thinking about planning an event at the children’s hospital where he volunteers each week. He further adds that he has been volunteering at the children’s hospital for more than 5 years.

Steven has a previous conviction for shoplifting.

Discuss the evidential matters arising.

Question 4 (10 marks)

Erica is being prosecuted for assaulting her neighbour Clara. The prosecution's contention is that Erica punched Clara during an argument in the lobby of their building. As a result, Clara fell and suffered injuries. After her arrest, Erica told the police that Clara's accusation of assault was not true and that Clara had been trying to get Erica into trouble with the law for months. Erica contends that the injuries Clara suffered were caused when Clara slipped and fell in the lobby. For those reasons, Erica will plead not guilty at the trial.

- (a) During the trial, the prosecution call Clara and Stephanie, a neighbour of Erica and Clara, who claims that she witnessed the incident in the lobby. Both Clara and Stephanie gave statements to the police shortly after the incident. On the morning of the trial, the prosecutor gave Clara and Stephanie copies of both statements and instructed them to read the statements carefully before giving their evidence in court.

What evidential matters arise in this situation?

- (b) When being cross-examined, Erica states that Clara was drunk when she slipped and fell in the lobby. However, Erica had failed to mention this issue in the statement that she had given to the police or during her examination-in-chief. During cross-examination, when the prosecutor stated that Erica had not mentioned this before and that she appeared to have made up this part of the testimony on the spot, Erica replied: "What I am saying about her is true. The fact is that Clara is an alcoholic". Erica's defence counsel now wishes to call Erica's aunt Edwina to give evidence that shortly after the incident, Erica had called Edwina on the phone and told her about the incident and said "The whole thing was Clara's own fault. She was really drunk".

Discuss the evidential matters arising and advise whether Edwina's evidence should be admitted.

Question 5 (10 marks)

Duncan has been charged with one count of attempted rape and his case will be heard before a judge and a jury in the Court of First Instance. The prosecution alleges that Duncan attempted to rape his friend Fiona in an alley adjacent to a pub. When a pub patron, Nigel, came out to smoke in the alley, he saw what was happening. Upon seeing Nigel, Duncan ran out from the alley. Although Duncan denies that he was even at the scene of the crime at the material time, the prosecution intends to call the following individuals who all identified Duncan as the person who committed the offence:

- (a) Nigel (an off-duty police inspector) says that when he entered the alley, he saw Duncan trying to take Fiona's clothes off. Nigel claims that he had earlier seen

Duncan and Fiona in the pub arguing near the toilets and that he had heard Duncan yell at Fiona. According to Nigel, once he witnessed the argument between Duncan and Fiona, he decided to keep a close eye on Duncan. However, later he lost track of them. When he went out to smoke in the alley, he saw what was happening and then Duncan ran. Although it was dark in the alley and Nigel was about 8 metres away from Duncan, Nigel is certain it was Duncan who attempted to rape Fiona. After Duncan ran, Nigel chased after him.

- (b) John says that he was entering the pub when he saw Duncan running out from the alley. However, John admits that he only caught a fleeting glimpse of Duncan before Duncan ran away. John also says that Nigel was running after Duncan and that Nigel asked John in which direction Duncan had gone because he was wanted for attacking a female.

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

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