

PCLL CONVERSION EXAMINATION JANUARY 2019

Title of Paper : Evidence
Date : 8 January 2019
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 2019

Evidence

Question 1 (10 marks)

D, a law student at University in Hong Kong, is on trial in the Court of First Instance before a jury, charged with trafficking in dangerous drugs. He is alleged to have supplied three fellow students with quantities of the controlled drug methamphetamine (commonly known as ‘ice’). The quantity of drugs involved means that, if convicted, D is facing a custodial sentence of around 15-years. It is an agreed fact that D has appeared twice before the Magistrates’ Court in Hong Kong and has two previous convictions for possession of dangerous drugs: (i) for a small quantity of cannabis in March 2017 (for which he was fined) and (ii) for a small quantity of ketamine in January 2018 (for which he was sentenced to a DATC 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 specialising in human rights. 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.

You, as Prosecuting Counsel, wish to object to this evidence. Explain the procedure and grounds for your objection and set out what options, if any, the trial judge has to deal with in this matter.

Question 2 (10 marks)

D is charged with robbery in the District Court. On the facts, common sense would suggest that, in the trial, it would be favourable to D’s case to produce evidence of a previous statement he made to police and/or to call other witnesses to attest to D’s earlier statement – in order to show that the evidence D is now giving in court is consistent with his earlier statement. D argues that as that earlier statement was made shortly after the events it describes, then it might be quite compelling corroboration of D’s present testimony?

However, D’s counsel explains to him that the rules of evidence severely restrict D’s ability to rely on what is generally known a “previous consistent statement”.

- (i) explain this rule generally **and**
- (ii) outline the four main exceptions to this rule.

Question 3 (10 marks)

This question requires **seven (7) short answers**: (1) Give a brief definition of the hearsay rule. Then answer questions (2) to (7) and for each question, give a **brief** statement clearly explaining whether the evidence *is hearsay* or *is not hearsay*, on the facts in each example.

1. Describe the hearsay rule
2. 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 £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.
3. 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”**.
4. 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 PCs pretending to be customers gave evidence in court for the Prosecution that they had been offered various sexual services.**
5. The making of the statement is 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”**.
6. The making of the statement is relevant to the state of mind of the person who heard the statement, which itself is a fact in issue. The Defendant was charged with the offence of being in unlawful possession of ammunition. His defence was that he had been threatened by terrorists and was acting under duress. **Evidence of what the terrorists had said to him** was held by the trial judge to be hearsay – is this correct?
7. 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, after arresting K and while they conducted the search, the police took (and recorded) **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. Was the judge correct?

Question 4 (10 marks)

The prosecution have charged D with Indecency with a Child under 16. D has pleaded not guilty and therefore the child victim (aged 10) will be required to give evidence in the trial. Explain the special rules of evidence that apply to a child giving evidence in a criminal trial in Hong Kong. In particular in respect of the law relating to, corroboration, competence, and any special procedures that may apply to the admission of evidence from vulnerable witnesses generally.

Question 5 (10 marks)

PW1 was called by the prosecution in a criminal trial of D for robbery. The incident involved D threatening the driver and stealing a large quantity of designer handbags from his delivery lorry. The driver of the vehicle (PW1) initially gave a full statement to the police clearly identifying D and giving a clear account of D's involvement in the robbery. PW1 has since, been convicted of an unrelated drug trafficking offence for which he is currently serving 10 years imprisonment. He was called by the Prosecution (from Stanley Jail) in the trial of D. Giving his Evidence in Chief he now says 'I cannot remember anything I said in my earlier statement to police and whatever it was, I made it all up' What is the status of PW1's evidence and how will the Judge direct the jury on how they should treat this evidence?

~ End of Examination Paper ~