

PCLL CONVERSION EXAMINATION JUNE 2015

Title of Paper : Evidence
Date : 23 June 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 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 June 2015

Evidence

Question 1 (10 marks)

You are the lawyer in three *separate* but similar trials. In each trial you are asked to represent a Defendant (D) who is charged with one count of Indecent Assault on Child A.

- (i) In the first trial there is no *direct evidence* that the defendant committed the offence charged [Indecently Assaulted child A] or any of the similar offences [Indecent Assaults on Child B & Child C]. However, the Prosecution have been given leave to adduce evidence suggesting the commission of a number of other similar offences [Indecent Assaults on Child B & Child C] all of which the defendant *had a clear opportunity* to commit on the facts.
- (ii) In the second trial there is no *direct evidence* that the defendant committed the offence charged [Indecent Assault on Child A] *but there is independent evidence* that he has, in the past, committed other similar offences [Indecent Assaults on Child B & Child C]. This is accepted by the Defence. The Prosecution case is that the circumstances of the offence for which D is presently charged *so closely resembles* those of the two earlier offences that the only reasonable conclusion is that all three offences are the work of one person. It therefore follows that the D is guilty of the offence charged.
- (iii) In the third trial *there is direct testimony* that D committed the offence charged [Indecent Assault on Child A] and the question is whether the witness (W) who says that he did was speaking the truth and is to be believed. In the trial, for Indecent Assault on Child A, the Prosecution have been allowed to adduce evidence from witnesses X and Y to testify to similar offences [Indecent Assault on Child B & Child C] on earlier occasions.

Citing relevant authorities, discuss the principles upon which the courts in Hong Kong may allow such evidence to be admitted generally and the likely directions in law in each trial.

Question 2 (10 marks)

Keith is charged with the fatal wounding of Francesca. The prosecution case in the murder trial is that he attacked Francesca with a knife after an argument in the lobby of the "Silver Dollar" nightclub in Wan Chai. Keith denies the attack, claiming he was in the cinema at the time. Francesca was taken to hospital by ambulance.

On the way, she said to Kieran, a friend, who accompanied her, "I did not know that Keith could not take a joke, he pushed that bloody knife into my chest. Make sure I get a beautiful funeral." She then died upon arrival at the hospital.

Chloe, also claimed to have seen Francesca's attacker. At an identification parade she identified Keith and called out the number representing Keith's position. While testifying, Chloe could not remember the number she called out during the identification parade.

The reception record of the "Silver Dollar" nightclub has the names of all the guests and visitors and the names of Keith and Francesca are in it for the material time. John, the receptionist who was on duty on the day of the incident has resigned from his job and cannot be located.

Sidney, an African tourist from Ghana, who had been drinking with Keith at the nightclub bar also witnessed the attack and shouted "Oh my God! Keith, I can't believe what you have done." Sidney has since left Hong Kong and is travelling in Australia and cannot be located.

The Prosecution intends to call Kieran, Chloe, John, and Sidney. Advise on the admissibility of their evidence.

Question 3 (10 marks)

Joyce is 26 and a mature student, studying law, at the University of Hong Kong. At the end of term Tom, a fellow student in her tutorial group, asked her if she would join him and others to go drinking in Lan Kwai Fong on Friday night. Joyce accepted and she and Tom spent the evening drinking and partying with about 10 other people. At around 1:00 a.m. Tom asked Joyce if she would like to come back to his flat for coffee. Joyce agreed and, saying good-bye to the others in the group, they took a taxi to Tom's flat in Pokfulam. Once inside the flat Tom became overly affectionate and the pair started kissing. Joyce was a little the worse for wear, having drunk the best part of a bottle of wine and two vodkas. She was not drunk and knew what she was doing but became uncomfortable with Tom's insistence. After about an hour Joyce decided that she wanted to leave and go home. Tom became angry and tried to pull her into the bedroom saying that she should stay the night. When she protested Tom attacked her and raped her.

After Tom passed out on the bed Joyce gathered her belongings and left in a taxi. The next morning she contacted her best friend Anne and told her what had happened. Anne persuaded Joyce to report the matter to the police – which she did at around 11:00 a.m. that morning and Tom was arrested and charged with rape later that day.

Tom says that Joyce consented to sexual intercourse and that she is only complaining now because he asked her to leave as his girlfriend Jane would be arriving early in the morning.

At trial Joyce gave evidence of the attack. The prosecution now want to call Anne to give evidence.

- i) Discuss the evidential basis upon which Anne's testimony may be put before the jury and whether it has any bearing on Tom's defence of consent.
- ii) If, instead of waiting until the next day, Joyce had made a 999 call to the police from the flat immediately after Tom had fallen asleep, would what was said by Joyce to the operator be admissible evidence in the trial?

Question 4 (10 marks)

Bonnie, Albert and Russell are all jointly charged with one count of obtaining property by deception, in that they set up a false company together and persuaded people to invest in the company before shutting the operation down and keeping all the money. Bonnie is also individually charged with making a false statement in a tax return.

At the trial Bonnie pleads guilty to the making of the false statement in the tax return, and all the defendants plead not guilty to the joint deception offence.

Bonnie states that there was no joint enterprise to set up a company together at all. Albert accepts that there was a jointly set up company that was used to commit fraud, but claims that he had nothing to do with it, and said in interview that he thought the police had charged him with the offence because the Police had a grudge against him. Russell has vigorously denied the offence.

Bonnie is previously of good character, Albert has previous spent convictions for road traffic offences and Russell has several previous convictions for deception offences. Russell's previous convictions all involve setting up false companies and fraudulently taking money from the investors.

Discuss the admissibility of character evidence that arise out of these facts for each Defendant.

Question 5 (10 marks)

Alex and Bruce were arrested on suspicion of committing an armed robbery on a jewellery store in Causeway Bay. Both were taken to Eastern police station where they were interviewed separately.

Alex claimed that he asked to see his solicitor but that his request was refused on the ground that waiting for his solicitor would cause unreasonable delay to the investigation. Alex further claimed that it was only when the police told him that Bruce had confessed (and implicated Alex) that he decided to confess.

Alex then made a taped statement in which he admitted his part in the burglary but claimed it had all been planned by Bruce. In fact Bruce had not made any confession and had maintained his silence throughout his interrogation.

Both men now stand jointly charged with armed robbery.

Before the trial a *voir dire* is held to determine the admissibility of Alex's confession. On the assumption that the trial judge accepts Alex's account of what happened during his interrogation, prepare an argument to support the *exclusion* of his confession using supporting case law.

~ End of Examination Paper ~