

PCLL CONVERSION EXAMINATION JUNE 2017

Title of Paper : Evidence
Date : 22 June 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 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 2017

Evidence

Question 1 (10 marks)

Anthony is a monk who is well known in the local community for his good character. Anthony is accused by Brian of stealing three diamonds from a jewellery shop. Though the police are aware that an unknown quantity of diamonds was recently stolen from a jewellery shop, they do not believe Brian's accusation that Anthony stole three diamonds. Brian is frustrated that the police do not believe his accusation, and forces entry into Anthony's bedroom in the monastery. Brian finds three diamonds in a small bag beside Anthony's bed, and carefully removes the bag which contains the diamonds. Brian takes the bag and the diamonds to the local police station. The police subsequently believe Brian's accusation and arrest Anthony on suspicion of stealing the three diamonds from the jewellery shop. At Anthony's trial, counsel for Anthony alleges that it is unlawful for the diamonds to be presented as evidence against Anthony, because the diamonds were unlawfully obtained by Brian forcing entry into Anthony's bedroom in the monastery.

How is the court likely to treat the admissibility of the diamonds as evidence considering the way in which the diamonds were obtained by Brian?

Question 2 (10 marks)

Mandy is on trial for possession of illegal drugs. She alleges during cross-examination that she has been framed by the police, with the following dialogue taking place:

Prosecution: Why are you so confident in denying responsibility for the drugs being found in your backpack?

Mandy: Because I don't do that kind of stuff. I didn't put them there.

Prosecution: If you didn't put them there, who did?

Mandy: The police.

Prosecution: The police put the drugs in your backpack?

Mandy: Yes.

Prosecution: That is a very serious allegation to make against the police.

Mandy: Well, everyone knows the policeman who found the drugs is a liar.

Prosecution: You are calling the policeman a liar?

Mandy: I am calling the policeman a liar.

Prosecution: Why do you call him a liar?

Mandy: Everyone knows it.

Prosecution: To clarify, you are accusing the policeman of lying about finding the drugs in your backpack?

Mandy: How many times do I need to say it? He lied about that, he lies about everything. He lied to his wife about what he got up to in Manila, he lied about Bill Chan's assault, he even lied to get his job.

At this point the trial judge intervenes to prohibit further questioning or comment as it relates to the character of the policeman. Why has the judge intervened in this way, and is he/she right to do so?

Question 3 (10 marks)

What does it mean when a court takes “judicial notice” in the law of evidence? What is the rationale behind judicial notice, and in what circumstances would it be likely to occur? Can a party challenge a fact of which judicial notice has been taken, and if so, how?

Question 4 (10 marks)

Alpha Ltd and Beta Ltd enter into a contract for the sale of computer hardware. The contract includes the following provision:

“Where a party to this contract is intentionally in breach of any provision thereof, said party shall pay to the other party a defaulting sum amounting to HK\$1,000,000.”

Beta Ltd fails to deliver technical components to Alpha Ltd according to the agreed delivery schedule. Beta Ltd claims that this failure is due to road traffic congestion and is beyond their control, and that there has therefore been no breach of the contract as the failure to deliver on time was not intentional. However, in a local bar, a director of Alpha Ltd overhears the brother of the Chief Financial Officer of Beta Ltd saying to a third party that “Beta made that other company wait for the delivery because, quite honestly, they had been nothing but trouble”. Alpha Ltd is the only company with which Beta Ltd has a contract which includes delivery. Alpha Ltd seeks to tender the statement of the brother as evidence of an intentional breach of contract by Beta Ltd.

To what extent would this statement be admissible as evidence? Explain your answer.

Question 5 (10 marks)

Explain in detail how a court is likely to treat evidence given by a child, and in particular whether and to what extent the fact that the person giving evidence is a child may affect the court's treatment of that evidence.

~ End of Examination Paper ~