

## **PCLL CONVERSION EXAMINATION JUNE 2019**

Title of Paper : Evidence  
Date : 18 June 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 5 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 2019

### Evidence

#### **Question 1 (10 marks)**

The Defendant, 35 years old, is charged with burglary at the “Hung On Building”, on 20th February 2019. Two Prosecution witnesses, (John and Kate) say that just as it was getting dark, at around 1830 hours, they saw the Defendant, hurriedly leaving the “Hung On Building”. The identification evidence is the only evidence against the Defendant in this case. There is no other forensic or circumstantial evidence against him. The Defendant was arrested later on the same day at 2330 hours in Causeway Bay (wearing white trainers, black jeans, and a dark green leather jacket) after reports of his acting suspiciously around a row of locked garages.

John is a security guard at “Hung On Building”. He claims to have watched the Defendant on his TV monitor standing around in the lobby. Since the Defendant appeared to be a stranger John went out of his office to check on him and just as he was doing so, he saw the Defendant from a distance of no more than 10 meters as he was exiting “Hung On Building” to the road. John picked the Defendant out in a subsequent ID parade two days later.

Kate is a resident of “Hung On Building” and claims the Defendant walked right past her as he left the building. She says he looked at her briefly before walking calmly to the exit and roadway. She says, “She would recognize his face anywhere.” Kate was never asked to attend any ID Parade.

Both John and Kate have given statements containing a description of the Defendant and his clothing (around 35-40, short black hair, white trainers, blue jeans and a black leather jacket). John and Kate will both give evidence in the District Court tomorrow that the Defendant is the person they saw leaving “Hung On Building” at around 1830 hours on February 20<sup>th</sup> 2019.

The Defendant denies that he was anywhere near “Hung On Building” at the relevant time, saying he was home in bed in North Point together with his girlfriend. He only went to Causeway Bay at around 2200 hours to meet a friend for a drink. The Defendant’s girlfriend has given an alibi statement to this effect, confirming he was at home with her at the time and only went out later.

Identify and discuss all the relevant evidential issues that are likely to arise at trial in respect of John and Kate and, in particular, say what directions, if any, the judge is likely to give before considering his verdict.

#### **Question 2 (10 marks)**

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

On the way, she said to Colin, a friend, who accompanied her, "I did not know that Alex 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.

Doris also claimed to have seen Brenda's attacker. At an identification parade she identified Alex and called out the number representing Alex's position. While testifying, Doris 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 Alex and Brenda are recorded in it as being at the nightclub at the material time. Eric, the receptionist who was on duty on the day of the incident has resigned from his job and cannot be located.

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

The Prosecution intends to call Colin, Doris, Eric, and Freddy. Advise on the admissibility of their evidence.

### **Question 3 (10 marks)**

Alice is 26 and a mature student, studying law, at the University of Hong Kong. At the end of term Bert, 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. Alice accepted and she and Bert spent the evening drinking and partying with about 10 other people. At around 0100 hours. Bert asked Alice if she would like to come back to his flat for coffee. Alice agreed and, after saying good-bye to the others in the group, they took a taxi to Bert's flat in Tin Hau. Once inside the flat Bert became overly affectionate and the pair started kissing. Alice was feeling unwell, 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 Bert's insistence. After about an hour Alice decided that she wanted to leave and go home. Bert became angry and tried to pull her into the bedroom saying that she should stay the night. When she protested Bert attacked her and raped her.

After Bert passed out on the bed, Alice gathered her belongings and left in a taxi. The next morning she contacted her best friend Anne and told her everything that had happened with Bert the night before. Anne persuaded Alice to report the matter to the police – which she did at around 1100 hours that morning. Bert was arrested and charged with rape later that day.

Bert says that Alice 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 Alice gave evidence of the attack. The prosecution now also 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 Bert's defence of consent.

**(8 Marks)**

ii) If, instead of waiting until the next day, Alice had made a 999 call to the police from the flat immediately after Bert had fallen asleep, would what was said by Alice to the operator be admissible evidence in the trial?

**(2 Marks)**

#### **Question 4 (10 marks)**

Andrew, Bill and Colin are all jointly charged with one count of obtaining property by deception. The allegation against them is 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. Andrew is also individually charged with making a false statement in a tax return.

At the trial Andrew 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.

Andrew states that there was no joint enterprise to set up a company together at all. Bill accepts that there was a jointly set up company that was used to commit fraud but claims he was not involved. Bill said in interview that he thought the police had charged him with the offence because they had a grudge against him. Colin has vigorously denied the offence.

Andrew is previously of good character; Bill has previous spent convictions for road traffic offences and Colin has several previous convictions for deception offences. Colin'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 of the three Defendants: Andrew, Bill and Colin.

#### **Question 5 (10 marks)**

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

Alan 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. Alan further claimed that it was only when the police told him that Bruce had confessed (and implicated Alan) that he decided to confess.

Alan then made a video-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 Alan's confession. On the assumption that the trial judge accepts Alan'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 ~**