
**HIGHER RIGHTS OF AUDIENCE ASSESSMENT
IN RESPECT OF CRIMINAL PROCEEDINGS**

THE WRITTEN EXAMINATION

Question paper

Time allowed: 2 hours 30 minutes

YOU MUST NOT OPEN THIS PAPER UNTIL YOU ARE TOLD TO DO SO

Permitted materials

- Archbold Hong Kong – Criminal Law, Pleading, Evidence and Practice
- The Hong Kong Solicitors' Guide to Professional Conduct (Vol.1) published by the Law Society
- The Law Society's Code of Advocacy for Solicitor Advocates

PLEASE READ THE FOLLOWING INSTRUCTIONS CAREFULLY

1. This written examination comprises one part of the assessment for higher rights of audience. There are 50 marks allocated for this examination.
2. Candidates may use their own copies of permitted materials, including those computer-printed hard copies. This is so even though they may contain annotations or highlighting provided this has been done in the ordinary course of use and reference. However, extra materials, for example, notes prepared specifically for this examination are not to be included. Use of electronic copies of permitted materials through a specified electronic device can be permissible subject to compliance of the requirements set out by the Higher Rights Assessment Board and candidates' declaration that the device does not contain any non-permitted materials or pre-prepared materials which may be of assistance in the examination. In the event of a dispute between the invigilator and a candidate, the decision of the invigilator shall be final.
3. Candidates must ensure that their answers provided in the examination scripts are legible to the examiners. If a candidate's handwriting is considered illegible, his/her written examination script will be assessed on the basis of the legible parts only and the marks awarded accordingly.
4. If, in answering any question in this examination, a significant ignorance of the code of ethics governing solicitors and/or solicitor advocates is revealed, the Higher Rights Assessment Board may determine that it should result in a failure of the overall assessment irrespective of the candidate's marks otherwise.
5. Candidates must not remove this question paper from the examination room.

The Case

Vicky is charged –

- a) with Mary in respect of one count of conspiracy to sell goods to which a forged trade mark is applied contrary to section 9(2) of the Trade Descriptions Ordinance (Cap. 362) and section 159A of the Crimes Ordinance (Cap. 200);
- b) with Don in respect of one count of conspiracy to traffic in a dangerous drug together with Mary and a person named Ah Keung contrary to section 4(1)(a) of the Dangerous Drugs Ordinance (Cap. 134) and section 159A of the Crimes Ordinance (Cap. 200); and
- c) with one count of dealing with property known or believed to represent proceeds of any person's drug trafficking contrary to section 25(1) and (3) of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405).

Mary is charged with Vicky in respect of one count of conspiracy to sell goods to which a forged trade mark is applied contrary to section 9(2) of the Trade Descriptions Ordinance (Cap. 362) and section 159A of the Crimes Ordinance (Cap. 200).

Don is charged with Vicky in respect of one count of conspiracy to traffic in a dangerous drug together with Mary and a person named Ah Keung contrary to section 4(1)(a) of the Dangerous Drugs Ordinance (Cap. 134) and section 159A of the Crimes Ordinance (Cap. 200).

Alex is charged with one count of assisting an offender, contrary to section 90(1) of the Criminal Procedure Ordinance (Cap. 221).

Summary of the Prosecution Evidence

1. Vicky and Mary were qualified beauticians and they became business partners in 2016. They jointly operated a beauty parlour called Super Beauty Parlour at Fortress Street, North Point. Apart from serving customers Vicky was responsible for sales and marketing while Mary was responsible for procurement of cosmetic products suited to the taste of customers.

2. Business flourished soon and the partnership made good profits. However, since the onset of Covid-19 all beauty parlours in Hong Kong had been shut down temporarily twice. That had led to rapid downturn in business. Even when they were allowed to reopen under Covid-19 restrictions in 2021, the number of clients dwindled to about 20-30% of the normal volume.

3. Vicky and Mary began to operate an online shop selling cosmetics at a website called Japan-Korea Direct in June 2020. Although the cosmetic products were imported from the Mainland, the goods were being sold as genuine Japanese or Korean goods at a discounted price on the website. Apart from online customers, Vicky and Mary were also selling those cosmetic products to customers who visited their beauty parlour physically. Initially, they had moderate success and managed to recoup about 30% of the profit that they had made previously. However, the overall profit was still 40% below the normal level.

4. Mary had difficulty in keeping up with her repayment of credit-card debts by summer of 2020. As at January 2022 when Hong Kong was struck by a new wave of Omicron, the total amount of debts that Mary owed to several banks was \$800,000. She also accumulated a debt of \$200,000 that she owed a loan shark called Ah Keung.

5. Ah Keung demanded repayment from Mary several times but to no avail. He became impatient.

6. On 1 February 2022 Ah Keung texted Mary by WhatsApp setting a final deadline for Mary to repay the debt of \$200,000 plus interest. Ah Keung wrote in the text message that if Mary did not pay by the deadline he would slash her face. Mary was frightened. She told Ah Keung, "I really have no money, my business is not earning any money".

7. On 6 February 2022, Ah Keung texted Mary, “My brother wants immediate payment but I am giving you a chance. Either you pay or you help my friend with an urgent transaction and he’ll allow you to have two more months to pay”. Ah Keung continued, “My friend has to urgently pay \$100,000 to a supplier in Pakistan but he only has \$50,000, can you get someone to lend you \$50,000 so as to make up \$100,000 for onward transfer to Pakistan?” Mary said, “I’ll try but you have to tell me what the payment is for?” Ah Keung replied, “Don’t ask me silly questions, just do as I say. The money is just for buying some cool stuff which will be delivered to Hong Kong after money is received in Pakistan”. Mary was curious and asked, “What cool stuff is that?”. Ah Keung said, “Don’t bother, it is as cool as “ice”. Just tell me, you will do it or not?”. Mary replied, “I’ll do it but I have no funds”. Ah Keung said, “I can pass to you \$50,000 if you help me out on this. You just find a way to get the remaining \$50,000 and transfer the money to Pakistan.” Mary then said, “Just give me some time to get the extra \$50,000.”. Ah Keung replied, “Okay, I’ll give you a few days.”

8. On 6 February 2022, Mary and Vicky exchanged the following WhatsApp messages:

“Mary: The cosmetic business was not doing good enough, I can find some “cool stuff” and we can make more money.
Vicky: What?
Mary: It is as cool as “ice”.
Mary: I know a source to get it cheaply.
Vicky: What source?
Mary: Leave it to me, just give me money and I will handle the rest.
Vicky: How much from you and how much from me?
Mary: You know I’m broke but I have the source and a sales outlet, you just provide the capital first. We will split the profit 50/50.
Vicky: Let me think about it.”

9. On 7 February 2022, Vicky asked Mary about details of that idea. Mary just told Vicky to transfer \$100,000 to a Pakistani called Hussain via WeChat Pay. Vicky told Mary that she could only put up \$50,000 and Mary had to pass the remaining \$50,000 to her.

10. On 8 February 2022, Mary texted Ah Keung, “I now have \$50,000 from my friend, please pass \$50,000 to me and give me details of the WeChat account of the Pakistani”. Ah Keung then provided the WeChat account of a Pakistani called Hussain to Mary. Ah Keung also gave \$50,000 in cash to Mary who then deposited it into Vicky’s sole-named bank account immediately.

11. On 9 February 2022, Mary texted Vicky by WhatsApp and told her to check her bank account for the \$50,000. Mary also said the money deposited was from her friend, Ah Keung. Vicky transferred \$100,000 to Hussain through WeChat Pay accordingly.

12. Vicky and Don are husband and wife. They jointly owned a flat that was subject to monthly mortgage repayments made through their joint-named bank account. Vicky's income from the beauty parlour business and the online shop was deposited into their joint account. The \$50,000 from Mary for transfer to Hussain in Pakistan was deposited into Vicky's savings account opened in her sole name.

13. On 10 February 2022 Mary received a WhatsApp text message from Ah Keung saying, "A parcel would arrive at your parlour on 14 or 15 February. You must pass it to me immediately after receiving it.". When Mary asked, "What is in the parcel?", Ah Keung read the message but did not respond.

14. On 14 February 2022 officers of the Customs and Excise Department ("Customs") stationed at Hong Kong International Airport discovered that an air parcel addressed to Super Beauty Parlour contained a dangerous drug, namely methamphetamine hydrochloride or "ice" and the retail value of which was about HK\$1 million. Customs mounted an undercover operation to deliver the parcel to the beauty parlour. However, no one answered the door. A notification card was left at the doorway for collecting the parcel at a post office.

15. On 15 February 2022 Mary went to Super Beauty Parlour and found a notification card tucked under the main door. She did not take it away but left it where she found it. She attempted to get in touch with Vicky by calling her, but there was no one answering her phone. She then called Don, pretending that she was on her way to Penny's Bay Quarantine Centre in response to a quarantine order because she had recently come into close contact with a Covid-19 patient. Mary asked Don to do her and Vicky a favour by delivering to a friend urgently an air parcel waiting to be picked up at a post office. Don agreed to help.

16. Don was arrested by Customs immediately following his picking up of the air parcel at the post office on the same day. Don was allowed to make a phone call to his wife, Vicky. Vicky

immediately phoned Mary but the phone was unanswered. Vicky left a text message by WhatsApp to Mary demanding an explanation.

17. Vicky was subsequently arrested while Mary was put on the Wanted Persons List.

18. Later, Mary read the WhatsApp text message from Vicky about Don's arrest.

19. On 17 February 2022, Mary was arrested by Police outside Tai Wing Wah Restaurant at Yuen Long town centre. According to Rural Patrol Unit officer PC 6789, Mary visited Alex at his village house the previous day.

20. Alex was also arrested on the suspected offence of assisting an offender as Mary had stayed in his village house the night before.

21. Under caution when arrested for the respective offences, all defendants remained silent. They are all remanded in custody.

22. Mary was initially charged with the first three counts of charges on the indictment jointly with Vicky in relation to the First Count, and jointly with Vicky and Don in relation to the Second and Third Counts.

23. During Mary's remand Customs Officers suggested to Mary that they were prepared to withdraw the two drug related charges and offer her immunity on the two drug related charges on condition that she would give evidence against Vicky and Don, and provide information that may lead to the arrest and conviction of Ah Keung. Mary agreed to the offer given to her by the Customs Officer.

24. When Mary's case was brought before the Magistrate, Mary pleaded guilty to the First Count. Sentencing for that count has been adjourned by the Magistrate to the Court of First Instance on a date to be fixed.

25. On 25 April 2022 Mary gave a non-prejudicial statement to the Customs Officer detailing the respective roles that she, Vicky, Don and Ah Keung played in respect of the two drug related charges.

Defence notes – Vicky

Family background

Vicky was born in Hong Kong. She was 30 at the time of the offence.

Her education was secondary level.

She was married to Don in 2012 and they had no children.

Work

Vicky relied on Mary's special source in Shanghai for the supply of the Japan / Korea Direct cosmetic products. She knew Mary had a lot of friends who had connections in Japan and Korea.

The cosmetic products were first shipped to Shanghai at a lower airfreight cost and by taking advantage of the cheaper and more efficient land courier service to ship the goods to Hong Kong.

Vicky had 3 bank accounts as follows:

1. A joint business bank account under which both Vicky and Mary were signatories for the businesses of Super Beauty Parlour and the online shop.
2. A joint account with Don for the monthly mortgage payment for a joint property owned by her and Don.
3. A sole-named bank account in her name.

Criminal Record

Vicky has a clear criminal record

The plea and the instructions

Vicky intends to plead NOT GUILTY to all the counts against her.

During the first two weeks of the online business operations, Vicky had compared the appearance of some of the cosmetic products at major department stores in Hong Kong. She did not notice

any difference, although she realized that the selling price at their online shop was about 60-70% of the local retail price.

Vicky thought “ice” was just the brand name of some cosmetic products.

On 15 February 2022, Vicky spent the whole day at her mother’s apartment. She did not go back to Super Beauty Parlour that day. Don called her in late afternoon after his arrest. Vicky boarded a taxi to Customs Headquarters in North Point. On the way she phoned Mary but was unanswered. Vicky then texted Mary demanding for an explanation.

In relation to the late notification that Mary has been given immunity on the drug related charges in return for her testifying against Vicky and Don, Vicky expressed a strong sense of injustice.

Defence notes – Mary

Family background

Mary was born in Hong Kong. She was 30 at the time of the offence.

Her education was secondary level.

She is single and the ex-girlfriend of Alex.

Lifestyle

Mary is sociable. Due to her outgoing personality, she has a lot of friends. Mary broke up with Alex in 2019. Mary has an opulent lifestyle and spent lots of money on buying clothes, handbags, and accessories.

The plea and the instructions

Mary intends to plead GUILTY to the First Count on the Indictment, i.e. Conspiracy to sell goods to which a forged trade mark is applied, contrary to section 9(2) of the Trade Descriptions Ordinance (Cap. 362) and section 159A of the Crimes Ordinance (Cap. 200).

In addition to the First Count, Mary was initially charged with the Second Count jointly with Vicky and Don, and the Third Count jointly with Vicky.

The Prosecution has since given her immunity in relation to the Second and Third Counts on condition that she will give evidence against Vicky and Don and provide to the Customs Officers information on Ah Keung that may lead to his arrest and conviction of the Second and Third Counts.

Mary has given a non-prejudicial statement to Customs Officers that detailed the respective roles that she, Vicky, Don and Ah Keung played in relation to the Second and Third Counts.

Mary agreed to help Ah Keung to arrange the transaction of the “cool stuff” because Ah Keung threatened to slash her face. She did not know that the air parcel that she asked Don to collect contained a dangerous drug. But, she suspected that it might contain contraband.

Mary was very worried after Don was arrested and sought shelter from Alex. She had not told Alex anything about the cool stuff nor her businesses.

Defence notes – Don

Family background

Don was born in Hong Kong. He was 30 at the time of the offence.

His education was secondary level.

He was married to Vicky in 2012 and they had no children.

Don and Vicky live at an apartment purchased in their joint names.

Occupation

Don is the senior sales agent of an insurance company and has been working there since graduation in 2009. He knew that Vicky was involved in online sales of imported cosmetic products but he had no idea about the business as he was too busy with his job.

Their family home was still on mortgage with a bank. The monthly repayments were made by way of autopay through a bank account held jointly by them.

He knew that Vicky's share of business income was deposited into the joint account but he never thought there was anything wrong with the arrangement.

Criminal record

Don has a clear record.

The plea and instructions

Don intends to plead NOT GUILTY to all the counts against him.

He knew that Vicky's online products were about 2/3 of their market price at department stores in Hong Kong.

Don believed Vicky had absolutely no involvement in drugs. Don also knew nothing about the air parcel. On 15 February 2022, he went to work as usual, expecting a whole day being engaged in business meetings. Unexpectedly, his meetings in the afternoon were cancelled due to connectivity problems at the office and he was free to leave office at any time.

At 2.30 pm the same day, Don received a phone call from Mary, asking him for a favour to help pick up an air parcel because she was on her way to Penny's Bay Quarantine Centre in response to a Quarantine Order.

Mary also asked Don to deliver the air parcel to a customer called Ah Keung if the air parcel arrived. Mary gave Ah Keung's mobile number to Don. Don did not ask any further questions.

At 3 pm on the same day, Don left his office for Super Beauty Parlour at Fortress Street, North Point, arriving at 3.30 pm. Upon arrival, he found a notification card, following which he went to the North Point Post Office to pick up a parcel. Before he managed to phone Ah Keung, he was arrested by Customs.

Don called his wife, Vicky, after he was given the permission to do so. He told her about his helping Mary to pick up an air parcel with a view to delivering that to Ah Keung.

Defence notes – Alex

Family background

Alex was born in 1989 Hong Kong. He was 33 at the time of offence.

He graduated from secondary school.

He is single and lives alone at a village house in Yuen Long.

He was boyfriend to Mary up to summer 2019.

Work

Alex runs an estate agency in Yuen Long urban area.

Criminal record

Alex has a clear criminal record.

Plea and instructions

Alex intends to plead NOT GUILTY to count 4.

After breaking up in summer of 2019, Alex still kept in touch with Mary from time to time. He learned from Mary that she began to run an online business selling Japan Direct and Korean Direct goods procured from overseas sources.

Alex knew that the prices that the goods were sold by Mary were at about 2/3 of normal market price. He thought Mary and Vicky were probably selling counterfeit goods. But he kept this opinion to himself. He did not think selling goods of that kind was a serious matter.

When contacted by Mary on the evening of 15 February 2022, he was delighted that Mary would visit him. He thought that the reason Mary wanted to stay with him for a short time was because of issues in relation to counterfeit goods.

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
CRIMINAL CASE NO. [20] OF 2022

HKSAR

V

VICKY 1st accused

MARY 2nd accused

DON 3rd accused

ALEX 4th accused

Charged as follows-

First Count (against 1st and 2nd accused)

STATEMENT OF OFFENCE

Cap. 362
Sec. 9(2)
and Cap. 200
Sec. 159A

Conspiracy to sell goods to which a forged trade mark is applied, contrary to section 9(2) of the Trade Descriptions Ordinance, Cap. 362 and section 159A of the Crimes Ordinance, Cap. 200, Laws of Hong Kong.

PARTICULARS OF OFFENCE

Vicky and Mary, between June 2020 and February 2022, conspired to sell goods to which a forged trade mark is applied, namely, 345 sticks of lipsticks bearing a forged trade mark of "Icy Touch".

Second Count (against 1st and 3rd accused)

STATEMENT OF OFFENCE

Cap. 134
Sec. 4(1)(a)
and
Cap. 200
Sec. 159A

Conspiracy to traffic in a dangerous drug, contrary to section 4(1)(a) of the Dangerous Drugs Ordinance, Cap. 134 and section 159A of the Crimes Ordinance, Cap. 200, Laws of Hong Kong.

PARTICULARS OF OFFENCE

Vicky and Don, on 15 February 2022, conspired together with Mary and a person named Ah Keung to traffic in a dangerous drug, namely, 860.10 grammes of a solid containing 850.70 grammes of methamphetamine hydrochloride.

Third Count (against 1st accused)

STATEMENT OF OFFENCE

Cap. 405
Sec. 25(1)
and (3)

Dealing with property known or reasonably believed to represent proceeds of an indictable offence, contrary to section 25(1) and (3) of the Drug Trafficking (Recovery of Proceeds) Ordinance, Cap. 405, Laws of Hong Kong.

PARTICULARS OF OFFENCE

Vicky, on 8 and 9 February 2022, together with Mary and a person named Ah Keung in Hong Kong, knowing or having reasonable grounds to believe that property, namely the sum of \$50,000 Hong Kong currency, in whole or in part directly or indirectly represented the proceeds of an indictable offence, dealt with the said property.

Fourth Count (against 4th accused)

Cap. 221
Sec. 90(1)

STATEMENT OF OFFENCE

Assisting an offender without lawful authority or reasonable excuse with intent to impede apprehension or prosecution, contrary to section 90(1) of the Criminal Procedure Ordinance, Cap. 221, Laws of Hong Kong.

PARTICULARS OF OFFENCE

Alex, on 16 and 17 February 2022, in Hong Kong, knowing or believing Mary to be guilty of an arrestable offence, provided accommodation for her with intent to impede her apprehension or prosecution without lawful authority or reasonable excuse.

(Signed)

Senior Assistant Director of Public Prosecution
For and on behalf of the Secretary for Justice

Date: 3 May 2022

To: Vicky (1st accused)
Mary (2nd accused)
Don (3rd accused)
Alex (4th accused)

TAKE NOTICE that you will answer to the
Indictment whereof this is a true copy at the
High Court, Queensway, Hong Kong, on the 4th day
of June 2022.

.....
Registrar

PERSONAL DATA
HONG KONG POLICE FORCE
STATEMENT/REPORT

Report No.: RN 220038998

Yuen Long Police Station

Name of informant/witness : Hilary C.C.C. No. [REDACTED]
Age : 30
Sex : Female
Identity Document type & No. : [REDACTED]
Address : [REDACTED]
Telephone No. : [REDACTED]
Occupation : WPC 1234
DOB : [REDACTED]
Nationality & Dialect : Cantonese, English
Taken by myself in English language from 1300 hrs–1330 hrs on 17 February 2022 at Room148,
Yuen Long Police Station
Interpreter : N.A.

States :-

I am willing to make a statement to the Police. The statement I am about to make is true to the best of my knowledge and belief and I make it knowing that if I wilfully state anything which I know to be false or do not believe to be true, I may be liable to prosecution for a criminal offence.

Signed.....WPC.1234....
Witnessed by.....
Interpreted by.....

1. I am WPC 1234 Hilary. I joined the Police Force in May 2011 and am presently stationed at Yuen Long Police Station.
2. I was on morning shift duty on 17 February 2022. At about 1200 hours I was on mobile patrol duty on board police vehicle AM 5354 together with my colleagues under the command of Station Sergeant John in the Yuen Long urban area. At about 1205 hours S. Sgt. John was informed by Regional Command Control Centre over the radio at AM5354 that there were some people engaged in a heated argument at outside the Tai Wing Wah Restaurant and we were told to go to have a look. On arrival I saw a long queue waiting for take-aways at outside the

Restaurant and several persons at the front were pointing fingers at a couple (who were in their 30's) for jumping the queue. They were on the brink of a fight. However, when my colleagues intervened they started to calm down. I was instructed by S. Sgt. John to check the name and ID number of the female (later known to be C/F Mary, aged 30) ("AP") of the couple while my other colleagues dealt with the others at the scene. When I checked the ID of C/F Mary with the Control Centre over the radio I was told that AP was on the Wanted Persons List in relation to a suspected drug trafficking case. I immediately put her under arrest and cautioned her. She remained silent.

3. At about 1240 hours we arrived back at the Yuen Long Police Station and the arrested person C/F Mary was taken to see the Duty Officer in the Report Room.
4. At about 1300 hours I made a notebook entry of the above incident in Room 148, Yuen Long Police Station.

I have read the above statement consisting of 2 pages in English each signed by me. I have been told that I can correct, alter or add anything I wish. This statement is true. I have made it out of my own free will.

(signed)

-End-

PERSONAL DATA
HONG KONG POLICE FORCE
STATEMENT/REPORT

Report No.: RN 220038998

Yuen Long Police Station

Name of informant/witness : David C.C.C. No. [REDACTED]
Age : 38
Sex : Male
Identity Document type & No. : [REDACTED]
Address : [REDACTED]
Telephone No. : [REDACTED]
Occupation : PC 6789
DOB : [REDACTED]
Nationality & Dialect : English
Taken by myself in English language from 2315 – 2359 hrs on 17-02-2022 at Room148
Interpreter : N.A.

States :-

I am willing to make a statement to the Police. The statement I am about to make is true to the best of my knowledge and belief and I make it knowing that if I wilfully state anything which I know to be false or do not believe to be true, I may be liable to prosecution for a criminal offence.

Signed.....PC.6789.....
Witnessed by.....
Interpreted by.....

1. I am the abovementioned person PC 6789. I joined the Police Force in January 2000 and am presently attached to the Pat Heung Police Station.
2. The Police Tactical Unit (PTU) and New Territories North Region mounted rural operations codenamed respectively “Underdragon” and “Claphunter”, on 17 February 2022 to interdict criminal activities. At 0800 hours, I reported to the Rural Patrol Unit of Yuen Long Division and was deployed to conduct anti-crime patrol at Tang Tau Po Village.
3. At about 0900 hours I was on high-profile patrol to combat burglary and robbery in the Tang Tau Po Village. The PTU assisted in eliminating hideouts of illegal immigrants. I also

distributed leaflets to villagers and hikers to raise their awareness of crime prevention and hiking safety.

4. At 1000 hours, some villagers from Tang Tau Po Village told me that they noticed a female stranger stayed in their neighborhood for a day without going out. The villagers found it strange and requested me to investigate the matter.
5. At 1100 hours, while I was patrolling near the Tang Tau Po Village, I bumped into Alex, whom I knew for some years when I was working at the Neighborhood Policing Unit in Yuen Long. Alex was with a lady called Mary at that time. We chatted about safety issues in the neighborhood. Alex said the village was quiet. He also told me that Mary was visiting him, had spent the night before with him at his village house and jokingly said that she should be safe while with him. Alex said everything was fine in the village before they left together in the direction of Yuen Long town centre.
6. At 1600 hours I went off duty at Yuen Long Police Station. I passed by the Report Room and noticed Mary whom I met in the morning was investigated by my colleagues. After enquiring with the Duty Officer, I was told that Mary was a wanted person for trafficking in a dangerous drug and selling counterfeit goods. I immediately reported my earlier encounter with Mary together with her boyfriend Alex at the Tang Tau Po Village to the Duty Officer. Subsequently I was instructed to assist in the investigation of the involvement of Alex in Mary's suspected offences.
7. At 2000 hours I went to the village house of Alex where he was arrested for assisting an offender. Under caution, he remained silent.

I have read the above statement consisting of 2 pages in English each signed by me. I have been told that I can correct, alter or add anything I wish. This statement is true. I have made it out of my own free will.

(signed)

-End-

**PERSONAL DATA
CUSTOMS AND EXCISE DEPARTMENT
STATEMENT/REPORT**

Case No.: CID/1/222/22

Customs Headquarters Building

Name of informant/witness : Mary

C.C.C. No. [REDACTED]

Age : 30

Sex : Female

Identity Document type & No. : [REDACTED]

Address : [REDACTED]

Telephone No. : [REDACTED]

Occupation : [REDACTED]

DOB : [REDACTED]

Nationality & Dialect : Chinese, Cantonese

Taken by Customs Officer 80123 in English language from 1300 hrs–1700 hrs on 25 April 2022 at Room 808, Customs and Excise Headquarters, North Point, Hong Kong.

Interpreter : N.A.

States :-

I am willing to make a statement to the Customs. The statement I am about to make is true to the best of my knowledge and belief and I make it knowing that if I wilfully state anything which I know to be false or do not believe to be true, I may be liable to prosecution for a criminal offence.

Signed.....Mary.....

Witnessed by.....

Interpreted by.....

1. I am Mary, and I was born in Hong Kong in February 1992. I attended school up to secondary level, and I was qualified as a beautician after I had completed a diploma course at the Vocational Training Council in Kwai Chung.
2. Vicky was my school mate at secondary school from 2003 to 2009, and we attended the same diploma course at Vocational Training Council from 2009 to 2010.
3. In 2016, Vicky and I became business partners in operating a beauty parlour jointly. We rented a shop space at Fortress Street, North Point. The name of our beauty parlour is Super Beauty

Parlour. Vicky and I served customers personally whilst Vicky had the responsibility over sales and marketing. For me, I was responsible for procurement of cosmetic products that suited the taste of our customers.

4. Business flourished soon since we commenced business in 2016 and the partnership was making good profits. However, since the onset of Covid-19 in the third quarter of 2019 all beauty parlours in Hong Kong had been shut down temporarily twice. That had led to rapid downturn in business. Even when beauty parlours were allowed to reopen under Covid-19 restrictions in 2021, the number of clients dwindled to about 20-30% of the normal volume.
5. Since early 2020, Vicky and I had been desperate in looking for other business opportunities in order to make our ends meet. In June 2020, we began to operate an online shop selling cosmetics at a website called Japan-Korea Direct. Although we were able to make some profits from this online shop, the overall profit for 2021 was still 40% below the normal level.
6. On 1 February 2022, Ah Keung to whom I owed some money texted me by WhatsApp setting a final deadline for me to repay him a debt of \$200,000 plus interest. Ah Keung wrote in the text message that if I did not pay by the deadline he would slash my face. I was frightened, and I told Ah Keung, "I really have no money, my business is not earning any money".
7. On 6 February 2022, Ah Keung texted me, "My brother wants immediate payment but I am giving you a chance. Either you pay or you help my friend with an urgent transaction and he'll allow you to have two more months to pay". The texted message also said, "My friend has to urgently pay \$100,000 to a supplier in Pakistan but he only has \$50,000, can you get someone to lend you \$50,000 so as to make up \$100,000 for onward transfer to Pakistan?" I then replied, "I'll try but you have to tell me what the payment is for?" Ah Keung replied, "Don't ask me silly questions, just do as I say. The money is just for buying some cool stuff which will be delivered to Hong Kong after money is received in Pakistan". I was curious and asked, "What cool stuff is that?". Ah Keung said, "Don't bother, it is as cool as 'ice'". Just tell me, you will do it or not?". I replied, "I'll do it but I have no funds". Ah Keung said, "I can pass to you \$50,000 if you help me out on this. You just find a way to get the remaining \$50,000 and transfer the money to Pakistan." I then said, "Just give me some time to get the extra \$50,000.". Ah Keung replied, "Okay, I'll give you a few days.". I suspected that the cool stuff might be some contrabands. It might be ice. But, Ah Keung did not tell me exactly what it was.
8. On 6 February 2022, I texted with Vicky using WhatsApp. The following is a record of our messages saved on my handphone:

"Mary: The cosmetic business was not doing good enough, I can find some "cool stuff" and we can make more money.

Vicky: What?

Mary: It is as cool as "ice".

Mary: I know a source to get it cheaply.

Vicky: What source?

Mary: Leave it to me, just give me money and I will handle the rest.

Vicky: How much from you and how much from me?

Mary: You know I'm broke but I have the source and a sales outlet, you just provide the capital first. We will split the profit 50/50.

Vicky: Let me think about it."

9. On 7 February 2022, Vicky asked me about details of that idea. I told Vicky what was said between I and Ah Keung, and told Vicky not to ask too many questions but just transfer \$100,000 to a Pakistani called Hussain via WeChat Pay. Vicky told me that she could only put up \$50,000 and I had to pass her the remaining \$50,000.
10. On 8 February 2022, I texted Ah Keung, "I now have \$50,000 from my friend, please pass \$50,000 to me and give me details of the WeChat account of the Pakistani". I then got the WeChat account details of a Pakistani called Hussain from a WhatsApp message sent from Ah Keung's phone. Ah Keung came to see me at Super Beauty Parlour afterwards on the same day and gave \$50,000 in cash to me. I deposited that money into Vicky's sole-named bank account immediately.
11. At around 10 a.m. on 9 February 2022, I texted Vicky by WhatsApp to tell her to check her bank account for the \$50,000. I also said the money deposited was from my friend, Ah Keung. I told Vicky details of the WeChat account of a Pakistani called Hussain and asked her to transfer the money to that WeChat account. At around 11 a.m., Vicky told me that she had transferred \$100,000 to Hussain's account through WeChat Pay.
12. On 10 February 2022, I received a WhatsApp text message from Ah Keung saying, "A parcel would arrive at your parlour on 14 or 15 February. You must pass it to me immediately after receiving it.". When I asked, "What is in the parcel?", Ah Keung did not respond, but I saw from my handphone that Ah Keung had read the message.
13. On 15 February 2022, I went to Super Beauty Parlour and found a notification card tucked under the main door. I did not take it away but left it where I found it. I attempted to get in touch with Vicky by calling her, but there was no one answering her phone. I then called Vicky's husband, Don. I said to Don that I was on my way to Penny's Bay Quarantine Centre in response to a quarantine order because I had recently come into close contact with a Covid-19 patient, and that I needed him to do me and Vicky a favour by delivering to our friend urgently an air parcel waiting to be picked up at a post office. Don told me that he would do that if Vicky agreed.
14. I knew that Don was arrested by the Customs Officers from the WhatsApp message that I received from Vicky on 15 February 2022. I did not respond to Vicky's message because I

believed something had gone wrong. What I suspected to be contraband from Pakistan may have turned out to be true. I was very scared and was looking for a place to hide.

15. I went to my ex-boyfriend Alex to find shelter on 16 February 2022. I stayed at his village house that night. Alex and I went to Yuen Long town centre the next day, and I was arrested by a police officer at around 12:20 pm outside Tai Wing Wah Restaurant.

I have read the above statement consisting of 4 pages in English each signed by me. I have been told that I can correct, alter or add anything I wish. This statement is true. I have made it out of my own free will.

(signed)

-End-

The Questions

Question 1

Shortly before the trial, Vicky and Don were informed by the Prosecution that Mary has been given immunity in respect of the two charges of (a) Conspiracy to Traffic in a Dangerous Drug; and (b) Dealing with Property Known or Believe to Represent Proceeds of an Indictable Offence.

In the meantime, Mary pleaded guilty to the charge of conspiracy to sell goods to which a forged trade mark is applied before a Magistrate. The sentencing on the charge has been transferred to the Court of First Instance on a day to be fixed.

In the meantime, Vicky told you, as her solicitor-advocate, that she heard that there was a deal struck between Mary and the Customs Officers to the effect that Mary would provide information on the whereabouts of Ah Keung in return for the Prosecution's dropping the drug-related charges against her.

In response to your seeking information about the immunity from the Prosecution, you were only informed that Mary would be a witness in the proceedings against Vicky and Don.

What are the relevant principles for a criminal trial that you should rely on in deciding the next procedural steps that you should take before the trial? **[8 marks]**

Question 2

When the Court was adjourned at the end of the third day of the seven-day trial set down for the case against Vicky, Mary and Don, Vicky told you, as her solicitor-advocate, the following:

- a) she recalled that one of the lady jurors was a regular customer ("J") of their beauty parlour;
- b) J stopped visiting the beauty parlour since end of 2020;
- c) J had bought some cosmetics that are subject of the charges under the Trade Descriptions Ordinance;

-
- d) J had never complained about the cosmetics that Vicky and Mary sold her;
 - e) J had been receiving discounts for services that she obtained from their beauty parlour; and
 - f) Vicky remembered that J was on very good terms with the parlour and that she still owed the beauty parlour some money for the cosmetics that she had bought on credit.

Vicky said to you that she was quite happy about the fact that J was one of the jurors. What are the matters that you should consider when deciding the action, if any, that you would take? [6 marks]

Question 3

Assuming that immunity is not granted to Mary in respect of any charges and she is pleading not guilty to them. She chose to testify as a defence witness in the Defence's case. During the course of Mary's evidence, she said she reported to WPC 1234 on 17 February 2022 in Yuen Long town centre that she had not contacted Don and did not know the parcel contained dangerous drug. The Prosecutor puts to her that she is making up a story because "none of this was put to the police officer during her cross examination". Mary says, "Well, that's not my fault if my lawyer didn't ask her".

In the absence of the jury the judge asks you for an explanation. Being the Defence solicitor-advocate for Mary, how should you explain to the judge if –

- a) it is your fault as you had skipped a page of your notes when cross examining the police officer; [4 marks]
- b) it is not your fault at all, should you tell the judge so that the judge does not think the worse of you; [4 marks] and
- c) what is your proposed remedy and why? [7 marks]

Question 4

Assuming that there was a breach of the rule in **Browne v Dunn (1893) 6 R. 67** and it was not remedied at the trial. In the course of summing up of Mary's evidence, the trial judge said the following:-

“During cross-examination of Mary, it was pointed out that some factual scenario she told you had not been put to the prosecution witness, WPC 1234 for her to respond. However, the fact that such allegation had not been put to the relevant witness for her to respond is a matter which you are entitled to take into account in your assessment of the credibility of the defendant.

If you consider appropriate, you may ask yourself whether it was an indication that the defendant was making up a false story as she went along in giving evidence, as otherwise her lawyer would have put those allegations to the relevant witness. If you find such omission affects your assessment of Mary’s credibility, it is also up to you to decide whether its effect is confined to that particular version of facts or it affects your assessment of Mary’s overall credibility. Whether or not you are to accept the evidence of a particular witness is a matter entirely for you.”

After the jury’s deliberation, the jury returned a unanimous verdict of guilty in the case of Mary. You are the Defence solicitor-advocate for Mary. On the basis of the judge’s summing up, what basis do you have for grounds of appeal to the Court of Appeal? **[7 marks]**

Question 5

Following the close of the Defence Case, when the judge was about to move onto the next stage of the proceedings, one of the jurors indicated to the judge that there was a request from four of the jurors that they would need the service of an interpreter to translate the oral addresses of the Prosecutor and the Defence solicitor-advocate, and the summing up of the judge because they feared that whilst they have no problem in understanding the evidence given by witnesses in Cantonese, they might not understand fully when the lawyer’s addresses and the judge’s summing up are given in the English language.

How would you address the judge when you are being asked to make submissions on this request? **[7 marks]**

Question 6

On the day following the arrest of Alex and Mary, Alex was brought before a magistrate on a charge of assisting an offender contrary to section 90(1) of the Criminal Procedure Ordinance

(Cap. 221). Alex was refused bail and the case against him was adjourned for two weeks for further enquiries and legal advice.

You were instructed to pay Alex a legal visit at Lai Chi Kok Remand Centre on 21 February 2022. How would you advise Alex on how he should plead to the charge if the Prosecution decided to proceed with it when the case resumes for mention? **[7 marks]**

**YOU MUST NOT REMOVE THIS QUESTION PAPER
FROM THE EXAMINATION ROOM**