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

THE WRITTEN EXAMINATION

Question paper

Time allowed: 2 hours 30 minutes

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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
- Code of Conduct of the Bar of the Hong Kong Special Administrative Region

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.
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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

Elliott is charged –

- a) with Conner and George one count of manslaughter contrary to Common Law and punishable under section 7 of the Offences Against the Person Ordinance (Cap. 212);
- b) with Conner and George one count of conspiracy to rob, contrary to section 10 of the Theft Ordinance (Cap. 210) and section 159A of the Crimes Ordinance (Cap. 200); and
- c) with Conner and George one count of robbery contrary to section 10 of the Theft Ordinance (Cap. 210).

Conner is charged-

- a) with Elliott and George one count of manslaughter contrary to Common Law and punishable under section 7 of the Offences Against the Person Ordinance (Cap. 212);
- a) with Elliott and George one count of conspiracy to rob, contrary to section 10 of the Theft Ordinance (Cap. 210) and section 159A of the Crimes Ordinance (Cap. 200); and
- b) with Elliott and George one count of robbery contrary to section 10 of the Theft Ordinance (Cap. 210).

George is charged-

- a) with Elliott and Conner one count of manslaughter contrary to Common Law and punishable under section 7 of the Offences Against the Person Ordinance (Cap. 212);
- b) with Elliott and Conner one count of conspiracy to rob, contrary to section 10 of the Theft Ordinance (Cap. 210) and section 159A of the Crimes Ordinance (Cap. 200); and
- c) with Elliott and Conner one count of robbery contrary to section 10 of the Theft Ordinance (Cap. 210).

Summary of the Prosecution Evidence

1. Elliott, Conner and George were close friends. Elliott owed a loan shark \$800,000 and had defaulted in his repayments. He was threatened by the loan shark of “destructive” actions against him and his family. Elliott was desperate to get some quick money by hook or by crook.
2. On 20 December 2022 Elliott telephoned Conner saying that he had identified two jewellery shops in Yuen Long and Tsuen Wan respectively as targets for robbery. He asked if Conner would be interested. Conner first answered in the negative but upon a second call from Elliott, he agreed after being convinced that the job was going to be simple and easy considering that the shops’ security personnel were unarmed. Elliott said he would prepare all the necessary tools for doing the job.
3. Conner and George were having tea at the former’s home at the time of Conner’s telephone conversations with Elliott. The speakerphone was switched on during the second phone call. Conner and George discussed Elliott’s proposal and the related details. George agreed to take part as well. Conner then advised Elliott that they now had a new partner, George. Subsequently, they agreed to carry out reconnaissance of the jewellery shops.
4. On 22 December 2022 an Audi owned by Elliott, bearing false number plates, left North Point and travelled to Yuen Long. In convoy with the Audi were two stolen BMWs driven by Conner and George respectively. They checked the vicinities of a jewellery shop called Deacon’s Jewellers at On Lok Road, Yuen Long. Later the same day, one of the BMWs in grey and driven by George, was parked at a carpark in On Lok Road, Yuen Long to be used as the getaway car after the planned robbery was carried out.
5. The following day, 23 December 2022, Police found a grey BMW parked at On Lok Road in Yuen Long approximately 2 kilometres from Deacon's Jewellers. Inside the car were a number of tools, including a sledgehammer, a rucksack, some heavy-duty gloves, an all-in-one protective bodysuit and a set of registration number plates different from that of the grey BMW. It was discovered that the car had been reported stolen overnight on 20/21 December 2022 from a carpark in North Point. This was reported in the evening news on TV. Also stolen at the same time was another BMW, which was white.
6. They did not go ahead with the planned robbery of Deacon’s Jewellers because Police had located the intended getaway car. Elliott decided to rob the shop called Michael Jones Jewellers in Tsuen Wan instead. Conner and George agreed. Elliott and Conner would do that by smashing the shop windows and display counters with a sledgehammer and threatening the staff. Conner would then grab the diamond stones and gold ornaments and put them into a

travelling bag. Then they would get on the stolen white BMW to be driven by George as get-away car. They would later change to another car to be arranged by George to make good their escape.

7. On 28 December 2022, they proceeded with the plan. George stopped the white BMW outside Michael Jones Jewellers whilst Elliott and Conner got out and entered the shop. Elliott declared robbery and used a sledgehammer to smash the glass display counters. There were customers and staff present at the time. One of the staff, Peter, attempted to escape. He was grabbed by his nape by Elliott. Elliott was agitated and nervous as he was feeling that the situation was not under control. In the heat of the moment, he took out a pistol from his jacket and fired a shot at the ceiling intending only to threaten customers and staff inside the jewellery shop. Unfortunately, Peter was hit by a ricocheted bullet. He fell on the floor and became unconscious. The course of the robbery was captured by CCTV inside the shop.
8. Elliott and Conner managed to quickly snatch over \$7 million worth of diamond stones and gold ornaments before making off in the white BMW. Then, they boarded a light goods vehicle labelled GoGo Van. The vehicle was booked by George using his mobile phone. It was waiting round the street corner three junctions away. The driver, Ah Keung, allowed the three to board the light goods vehicle and they made good their escape.
9. In the same evening, Ah Keung found a packet bearing the name of Michael Jones Jewellers lying on the floor of the GoGo Van. Inside that packet, there were some diamond stones (later confirmed to worth \$500,000). He telephoned George, but there was no answer to his call. So, being a good citizen, he informed the Police of his discovery. After enquiries, the Police asked Ah Keung to call George again and to arrange a controlled delivery under Police surveillance. As a result, George was arrested by the Police on 28 December 2022. When confronted with the information provided by Ah Keung that there were three persons on board the GoGo Van, George revealed the identity of Elliott and Conner. Elliott and Conner were subsequently arrested on 30 December 2022.
10. Peter was pronounced dead on arrival at Yan Chai Hospital, Tsuen Wan.
11. D1, i.e. Elliott, made no confession to the police.
12. D2, i.e. Conner, gave the following statement under caution:

he admitted that when he and Elliot were about to get off from the white BMW he noticed that one of the pockets of Elliott's jacket was bulging. He thought that it looked like the handle of a pistol. He drew this to the attention of George but George showed no interest.
13. D3, i.e. George, said the following under caution:

-
- a) a story identical to paragraphs 2, 3 and 4 above;
 - b) he did not have any knowledge of Elliott's pistol which was used during the robbery;
 - c) he was just the driver of the get-away car for the Michael Jones robbery; and
 - d) he thought nothing would go wrong for a simple job like this.

Defence notes – Elliott

Family background

Elliott was born in Hong Kong. He was aged 40 at the time of the offences.

He completed his secondary education in Hong Kong.

His parents are now retired. He is the only child in the family.

Work

After graduation, he worked as a security officer in a security company and he was promoted to security manager in 2006. His monthly salary was \$55,000.

Elliott became an auxiliary police officer in 2005 and had been so until 2017 for 12 years. During his time in the auxiliary police force, he joined the Shooting Club of the Disciplined Forces and held a licence for a pistol that he still owned at the time of the robbery.

Criminal Record

Elliott has a clear criminal record.

Lifestyle

He was known for his extravagant lifestyle, and heavily indulged in buying fine clothing and gambling. He began to run up debts in 2021. With no other options to obtain credit, he resorted to borrowing money from loan sharks.

The plea and the instructions

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

Defence notes – Conner

Family background

Conner was born in Hong Kong.

He was 30 at the time of the offences.

His education was secondary level. He and George attended the same secondary school and were buddies.

He is single.

Employment

After completing his secondary education, he joined a well-established fast food chain store in Hong Kong as a supervisor. He was promoted to the position of shop manager in 2020 earning \$25,000 per month.

Due to COVID -19, Conner was laid off by his employer in 2021. He remained unemployed since then.

Criminal record

Conner has a clear record.

The plea and the instructions

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

Under caution, he admitted that when he and Elliot were about to get off from the white BMW he noticed that one of the pockets of Elliott's jacket was bulging. He thought that it looked like the handle of a pistol. He drew this to the attention of George but George showed no interest.

Defence notes – George

Family background

George was born in Hong Kong.

He was 28 at the time of the offences. He and Conner were buddies at school.

His education was secondary level.

He was single and living with his parents. His father, aged 54, worked as a watchman in an estate management company, earning \$13,000 a month. His mother, aged 52, worked as a cleaner in a restaurant, earning \$12,000 a month. She was unemployed in the past three years.

Occupation

George had been working as a taxi driver since 2019. His monthly income was around \$18,000.

Criminal record

George has a clear record.

The plea and instructions

George initially intends to plead NOT GUILTY to all the counts against him.

Under caution, he made a statement to the Police. The voluntariness of the confession is challenged on the ground of inducement because a police officer said to him repeatedly that “*you are just the get-away driver, you are sure to get a lighter sentence from the judge if you co-operate with us*”.

Further instructions following committal

George is prepared to plead guilty to count 3 (robbery) and to testify against D1 and D2 on all counts on behalf of the prosecution if he is given immunity in respect of count 1 (manslaughter) and count 2 (conspiracy to rob).

Furthermore, George could remember that as Elliott and Conner were getting off the stolen BMW on 28 December 2022 outside Michael Jones Jewellers, he saw Conner pointing to something bulging from the pocket of Elliott's jacket. He also heard Conner say to Elliott "I can see that you are quite well prepared, my friend". Elliott said something like "Yeah, that's for contingency. Just leave it to me". George made no response to these as he could not figure out what they meant.

The two paragraphs above were repeated in George's witness statement which he gave to the police for the purpose of applying for immunity.

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
CRIMINAL CASE NO. [10] OF 2023

HKSAR

V

Elliott 1st accused

CONNER 2nd accused

GEORGE 3rd accused

Charged as follows-

First Count (against 1st, 2nd and 3rd accused)

STATEMENT OF OFFENCE

Common Law
and Cap. 212
Sec. 7

Manslaughter, contrary to Common Law and punishable under section 7 of the Offences Against the Person Ordinance, Cap. 212, Laws of Hong Kong.

PARTICULARS OF OFFENCE

Elliott, Conner and George, on the 28th day of December 2022 at 1 Tai Hoi Road, Tsuen Wan in Hong Kong, unlawfully killed Peter.

Second Count (against 1st, 2nd and 3rd accused)

Cap. 210
Sec. 10 and
Cap. 200
Sec. 159A

STATEMENT OF OFFENCE

Conspiracy to rob, contrary to section 10 of the Theft Ordinance, Cap. 210 and section 159A of the Crimes Ordinance, Cap. 200, Laws of Hong Kong.

PARTICULARS OF OFFENCE

Elliott, Conner and George, on 20th December 2022 in Hong Kong, conspired to rob two jewellery shops, namely Deacon's Jewellers and Michael Jones Jewellers.

Third Count (against 1st, 2nd and 3rd accused)

Cap. 210
Sec. 10

STATEMENT OF OFFENCE

Robbery, contrary to section 10 of the Theft Ordinance, Cap. 210, Laws of Hong Kong.

PARTICULARS OF OFFENCE

Elliott, Conner and George, on 28th December 2022 at 1 Tai Hoi Road, Tsuen Wan in Hong Kong, robbed Michael Jones Jewellers of diamond and gold valued at \$7 million.

(Signed)

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

Date: 3rd April 2023

To: Elliott (1st accused)
Conner (2nd accused)
George (3rd 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 3rd May
2023.

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Registrar

List of Prosecution Witnesses

| <u>Number</u> | <u>Name</u> | <u>Role</u> |
|---------------|----------------|--------------------------|
| 1 | PC 1234 | Arresting Officer for D1 |
| 2 | PC 2345 | Arresting Officer for D2 |
| 3 | PC 3456 | Arresting Officer for D3 |
| 4 | PC 4567 | Exhibits Officer |
| 5 | Mr. Cheung Fai | CCTV Technician |
| 6 | Mr. Chan Keung | GoGo Van Driver |
| 7 | Mr. John Lee | TVB News Technician |
| 8 | Mr. Wong Ping | Cable News Technician |

PERSONAL DATA

STATEMENT/REPORT

File No.: 5678

Name of informant/witness : Cheung Fai C.C.C. No. [REDACTED]
Age : 38
Sex : Male
Identity Document type & No. : [REDACTED]
Address : [REDACTED]
Telephone No. : [REDACTED]
Occupation : CCTV Technician
DOB : [REDACTED]
Nationality & Dialect : Cantonese, English
Taken by myself in English language from 1300 hrs–1330 hrs on 1 January 2023 at Room 101,
Tsuen Wan Police Station

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 willfully 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.....Cheung.Fai

1. I am Cheung Fai. I joined the Global Computer Company as a CCTV Technician in October 2021.
2. From January 2022, our company has been retained by Michael Jones Jewellers for the installation and maintenance of the CCTV system at the jewellery shop. I am the technician for Michael Jones Jewellers responsible for the operation and maintenance of their CCTV system. The CCTV system at Michael Jones is installed with 10 cameras covering the street outside the jewellery shop, the entrance to the jewellery shop and the entire sales counter area.
3. On 28 December 2022, I was asked by police to retrieve the recordings from the CCTV system

at Michael Jones Jewellers for investigation into a robbery case. At 10 am on 29 December 2022, I accessed the server of the CCTV system at Michael Jones, which is password protected and made a copy of the video recordings of all the cameras on one DVD disc. These video recordings cover the period of 10 am to mid-night of 28 December 2022. The DVD disc was then put into a secured box, which was handed over to the police later in the afternoon on 29 December 2022.

4. At the time of making the copy of the relevant CCTV video recordings, the CCTV system at Michael Jones was operating properly and there was no sign of any unauthorized interference with the system.
5. I have read the above statement consisting of 2 pages in English each signed by me. I understand that I can correct, alter or add anything I wish. This statement is true to the best of my knowledge and belief. I have made it out of my own free will.

(signed)

-End-

PERSONAL DATA

STATEMENT/REPORT

File No.: 2200

Name of informant/witness : Chan Keung C.C.C. No. [REDACTED]
Age : 25
Sex : Male
Identity Document type & No. : [REDACTED]
Address : [REDACTED]
Telephone No. : [REDACTED]
Occupation : Driver
DOB : [REDACTED]
Nationality & Dialect : Cantonese, English
Taken by myself in English language from 1300 hrs–1330 hrs on 30 December 2022 at Room 1, Go Go Van Office, Tsuen Wan

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 willfully 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.....Chan.Keung

1. I am Chan Keung. I joined GoGo Van Company (“the company”) as a GoGo Van Driver Partner in May 2021.
2. In order to use GoGo Van service, customers are required to register with the company by providing some basic data such as name and a mobile phone number. I can access such information when an order is referred to me by the company for communication with the customer, if needed.
3. I was on my Van, registration number XX123, that was parked in Tsuen Wan area on 28 December 2022. At about 12 noon, I received a mobile order from the company through the

GoGo Van App. The order was placed by a person called George with the registered telephone number 8765-4321. The order was to pick up several carton boxes of goods and three passengers at 1 pm on 28 December 2022 at Tai Hoi Road, Tsuen Wan, for a journey to Marble Road, North Point.

4. I arrived about 10 minutes earlier than the appointed time at the agreed location and waited for the customers. At around 1.10 pm on 28 December 2022, three Chinese men boarded my van with a travelling bag filled with something. One of them identified himself as George. They seemed to be in a hurry and asked me to get going right away after boarding. They did not talk a lot during the whole journey and later got off at Marble Road, North Point. The entire journey took about 40 minutes.
5. After they left the van, I tidied up the inside of the van as usual. I found a small packet from the floor of the van bearing the name of Michael Jones Jewellers. When I opened it, I found inside several tiny stone-like objects. They looked like diamond. I immediately phoned the mobile phone number of the person who made the booking, which was a person called George. No one answered after repeated calls. I did what a good citizen would do and called police to report about the stones found. Shortly after, police arrived and took over the stones for investigation.
6. I was asked by the police to call George again, which was successful. I was also asked by the Police to arrange to deliver the packet to George under police surveillance, which I did. Then, when I met George at Marble Road, North Point, he was arrested by the police.
7. I have read the above statement consisting of 2 pages in English each signed by me. I understand that I can correct, alter or add anything I wish. This statement is true to the best of my knowledge and belief. I have made it out of my own free will.

(signed)

-End-

The Questions

Question 1

You are the solicitor-advocate for George. George instructs you that he is willing to plead guilty to count 3 (robbery) and to testify on all counts on behalf of the prosecution if he is granted immunity in respect of count 1 (manslaughter) and count 2 (conspiracy to rob).

How would you persuade the prosecution that George should be granted the proposed immunity?
[8 marks]

Question 2

Before arraignment on the first day of the trial, the solicitor-advocate for Elliott applied to quash the count of conspiracy, arguing that the prosecution ought not to have proceeded against Elliott with both the substantive count of robbery and the conspiracy count.

- a) If you are the solicitor-advocate for Elliott, what are the merits of Elliott's case in support of the application to quash the conspiracy count? **[4 marks]**
- b) If you are the solicitor-advocate for the prosecution, what are the grounds for opposing the application to quash the conspiracy count? **[4 marks]**

Question 3

The case was set down for trial. George pleaded not guilty. After the prosecution's case, he testified as follows: -

- i. he was only agreeing with Elliott and Conner to rob jewellery shops by using sledgehammers to break shop windows and display counters;
- ii. he did not have any knowledge of the pistol hidden inside the pocket of the jacket worn by Elliott;
- iii. he never thought that shooting would happen in the course of the robbery; and

-
- iv. he remained in his car and did not enter Michael Jones Jewellers throughout the course of the robbery.

You are the solicitor-advocate for George.

- a) What is the position in law on joint enterprise in Hong Kong? **[5 marks]**; and
- b) how would you address the jury on behalf of George in relation to the manslaughter count? **[5 marks]**

Question 4

You are the solicitor-advocate for George, what should you do if you encounter the following ethical issues:

- a) During the trial, George said that you are an idiot, and he could have cross-examined the last witness much more effectively than you did. He then said you did it because you were collaborating with the prosecutor to get him convicted. **[4 marks]**
- b) Your solicitor instructs you (as a solicitor-advocate) to make an application which you consider has no merit whatsoever. You politely decline to do so, pointing out that under the rules of professional conduct you cannot make submissions which, in your view, have no merit. The solicitor nevertheless insists that you make the application. **[4 marks]**

Question 5

On the assumption that there was no application made in relation to the indictment and no immunity was granted to George. The trial went ahead as originally scheduled.

George did not testify.

In the course of summing up George's case, the trial judge said the following:-

"The 3rd defendant has chosen not to give evidence or call any witnesses. That is his right not to give evidence or to call witnesses. The prosecution has, however, adduced into evidence what the

defendant said in reply to police officers at the Police Station and what he said and recorded during an interview under caution. That does not mean that the Prosecution accepts the account and explanation given by the 3rd defendant were true. It is for you to decide and assess the credibility what if any of the contents are true or might be true. You must assess the content of the statements in the record of interview as a whole.

The stance of the Prosecution is that although the Prosecution accepts that some of the statement said by the defendant were true, the defendant was not telling the whole truth.

It is an admitted fact that the defendant does not have a criminal record in Hong Kong. That in itself is not a defence to any criminal offence, but it is evidence that you should take into account in the defendant's favour. His clear record is evidence of his good character in that it may mean that he is less likely than otherwise might be the case to commit the crime alleged."

The jury returned a unanimous verdict of guilty on all counts against George. You are the solicitor-advocate for George. Does the judge's summing up give rise to any grounds of appeal? Please provide reasons for your answer. **[8 marks]**

Question 6

George was granted immunity in relation to counts 1 and 2 and he pleaded guilty to count 3. He gave evidence in accordance with his witness statement made to the police in terms identical to the "Further instructions following committal" in his Defence Notes. D1 and D2 were then convicted by the jury of all 3 counts.

Conner gave evidence in accordance with what he said under caution in terms identical to "The plea and the instructions" in his Defence Notes.

The judge sentenced George to 8 years' imprisonment.

George seeks your advice as to whether the sentence is too heavy. As George's solicitor-advocate, how would you advise him? **[8 marks]**

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