

**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

Tom is charged with one count of forcible detention of person with intent to procure a ransom contrary to section 42 of the Offences Against the Persons Ordinance (Cap. 212). Harry and Sally are each charged with one count of dealing with property known or believed to represent proceeds of an indictable offence contrary to section 25(1) of the Organized and Serious Crimes Ordinance (Cap. 455).

The case against the defendants is contained in the document below that is headed “Summary of the prosecution evidence”.

The instructions of the defendants are contained in the notes headed “Defence notes”.

Summary of the prosecution evidence

John is the bodyguard to the 10-year-old son of tycoon Lionel Chan. On 4th March 2020 at 6pm, Lionel Chan's son Barry wanted an ice cream, so John took him to an Italian restaurant Paulo's in Central. They sat down in the restaurant and ordered. As they were waiting for the ice cream, John went into the bathroom, leaving Barry alone at the table. When he came out of the bathroom, Barry was nowhere to be seen. He went outside and he saw a blue car driving past. He saw a man in the driver's seat with Barry in the passenger seat. However, the car was driving too fast and he did not see the registration number of the car.

After 7pm, Lionel Chan received a call from an unknown caller. He picked it up and heard Barry crying loudly and saying that he wanted to go home. Then Lionel heard a male deep voice on the phone, "Mr Lionel Chan, your son Barry is now with me. If you want him back alive, you need to prepare HK\$10million in \$1000 notes. I need you to put the money in a black gym bag and deposit it into the rubbish bin at A34 bus stop opposite Clear Water Bay First Beach at exactly 10am tomorrow morning. After I receive the money, I will call you and tell you your son's location for pick up. If you don't do as I say, your son dies. If you call the police, your son dies."

Fearing for his son's life, Lionel complied. The next morning on 5th March 2020 he went out to Clear Water Bay First Beach and threw the gym bag with the money into the bin next to the A34 bus stop at 10am. He then left. 30 minutes later at 10:30am, Lionel received a call from an unknown caller. It was the same male voice on the line, "Mr Chan, you can now pick up your son. He is outside Frank's Diner by Clear Water Bay First Beach." After Barry was picked up outside Frank's Diner, he was taken to Tseung Kwan O Hospital – no visible or internal injuries were identified.

At 12pm on the same day, the police arrested Tom at his home in North Point. They were able to locate him because Frank from Frank's Diner saw a blue vehicle dropping off a 10-year-old child outside the restaurant. Frank copied down the registration vehicle, which the police later used to locate Tom. Under caution he remained silent. They conducted a search of his home and his vehicle, the gym bag with money was nowhere to be found. The next day on 6th March 2020, the police detected movement in the bank account of Tom's wife Sally and that HK\$10million was deposited into Sally's account by a man named Harry. The police arrested Sally and Harry at their respective homes. Under caution they also remained silent.

At the police station, Tom, Sally and Harry were all cautioned again for the offences they were charged with. Under caution, all continued to remain silent. Tom was refused bail, but Sally and Harry were given bail.

Inside the garden shed at the backyard of Tom's home, three hairs were found on the floor and seized as evidence. Forensic examination showed that 2 hairs belonged to Tom, whilst one belonged to Barry. Tom has black hair and Barry has blonde hair.

Defence notes - Tom

Family background

Tom was born in Hong Kong. He was 59 at the time of the offence.

His education level is secondary school.

He is married to his high school sweetheart Sally, who is a housewife. They have two children from the marriage, respectively aged 10 and 12.

He is the breadwinner of the family.

Employment

Since graduating secondary school, he worked as a security guard at Lionel Chan's Corporation and has been working there for over 40 years. Recently, due to the economic decline, Lionel Chan's Corporation started downsizing. As a result, Tom was summarily dismissed on 3rd February 2020.

Tom was very upset about the dismissal. Not only did the dismissal mean a financial burden for him and his family, he also felt that it was a denial of his hard work and loyalty to the company over the past 40 years. He blamed Lionel Chan for his unfortunate fate.

Since the dismissal, Tom had been unemployed. He had been trying to find employment elsewhere. However, given his old age and lack of experience elsewhere, he could not find a new job. With no income, he and his family have been living on his savings.

Criminal Record

Tom has a clear criminal record.

The plea and the instructions

Tom intends to plead NOT GUILTY to the offence.

In the afternoon of 4th March 2020, Tom was sitting at home in North Point. He was bored and had nothing to do. He then decided to drive out to Central and walk around. After he parked his car on Stanley Street, he walked around. As he was walking on Wyndham Street at around 6pm, he noticed a black limousine parked on the street with a bodyguard standing next to it. He recognized the bodyguard – it was John. John is the bodyguard of Lionel Chan's son Barry. He saw John open the door to the limousine and Barry stepped out. Together they went into the Italian restaurant Paulo's. Tom remembered John and Barry because sometimes Barry would visit his father Lionel at Lionel Chan's Corporation after school and Tom would sometimes have a chat with John and Barry.

Tom followed John and Barry into Paulo's. As it was early in the evening, the restaurant was not very crowded. Tom saw that John and Barry were sitting in the middle of the restaurant. Tom wanted to keep a healthy distance from them – so he chose to sit in the corner of the restaurant where the lighting was dim.

After they ordered and were waiting, Tom saw John going to the bathroom, leaving Barry sitting alone at the table. Tom then went up to Barry. Barry was bored waiting for his ice cream and was becoming impatient. Tom said to Barry, “if you come with me Barry, I will get you an ice-cream right away!” Barry followed Tom out of the restaurant to Stanley Street where Tom's car was parked. Barry got into the car and Tom drove away. As he was driving, Barry said, “Where is this ice-cream shop? I want my ice-cream now! If not, I want to go back to the restaurant!” Tom took him to an ice-cream shop nearby, waited for Barry to finish the ice-cream then dropped him off outside Barry's home in Central at around 8pm.

At around 12pm on 5th March 2020, the police came to Tom's home in North Point and arrested him for forcible detention. Under caution, he remained silent. At the police station, before the police officers conducted the cautioned interview with Tom, they hit him with the chairs in the interview room. He sustained injuries on his stomach and on his left arm. During the cautioned interview, Tom made no admission.

Defence notes – Harry

Family background

Harry was born in Hong Kong. He was 57 at the time of the offence.

His education level was secondary school.

He is single and lives alone in a house by the Clear Water Bay First Beach.

Employment

He worked as a journalist for a local newspaper after he graduated high school. However, he did not like the high stress that came with the job. At the age of 40, he realized that he did not want to be constantly working under stress. So he quitted his job, bought a small beach house by Clear Water Beach Bay and opened a kiosk selling souvenirs and postcards. He could stand on his own two feet with the modest profits he makes. Indeed he lost his lucrative income as a journalist which he had earned with his 20 years of experience, but that was ok – because he did not care about money.

Criminal record

Harry has a previous record of robbery in 2015.

Tom

Harry first met Tom in secondary school. They became best friends and had kept in close contact with each other even after secondary school when they pursued different careers.

After Tom's dismissal in February 2020, he often went to visit Harry at Clear Water Bay. They would sit at Harry's kiosk and talk. Harry knew that Tom was desperately in need of a job so that he could bring in some income for his family.

The plea and instructions

Harry intends to plead NOT GUILTY to the offence.

On 5th March 2020 at around 10:15am, Harry was sitting at his kiosk, contemplating life. All of a sudden, he saw Tom's car driving by. The car stopped and Tom got out of the car. Inside the car was a child of around 10 years old. Tom walked over to the kiosk with a black gym bag in his hand.

Tom said, "Harry – inside this gym bag is HK\$10million. I want you to deposit this into Sally's bank account today. I have to go. I am trusting you with this Harry." Tom passed Harry the bag. Harry looked inside and was shocked to see an enormous amount of money. He knew that Tom

was struggling with his finances, so he asked Tom, “Tom, where did you get all of this money?!” Tom said, “Oh I got it from my former boss. I asked him and he gave me this money! I need to go drop off his son now!” Tom then left hastily. He went back to his car and drove away.

Harry did as he was told. This was a huge amount of money and a huge amount of responsibility. He went to the bank after lunch and deposited the money. The gym bag looked old, so Harry threw it away.

The next day on 6th March 2020 at around 9:30am, before he was about to go out to the kiosk, the police came to his home and arrested him. Under caution, Harry remained silent. He continued to remain silent when the police cautioned him again at the police station.

Defence notes - Sally

Family background

Sally was born in Hong Kong. She is 56 at the time of the offence.

Her education level is secondary school.

She is married to her high school sweetheart Tom. They married as soon as they graduated high school. They have two children from the marriage, respectively aged 10 and 12.

She never worked and has always been a housewife.

Criminal record

Sally has a clear record.

The plea and instructions

Sally intends to plead NOT GUILTY to the offence.

On 4th March 2020 at around 5:30pm, Sally had just picked up her children from the tuition centre in North Point. She then walked home with her children. When she arrived home, she saw that Tom was not at home.

At around 7pm, Tom returned home. Sally asked him to sit down for dinner. Tom said, “Just one second I just need to get some ice-cream.” He then opened the freezer, got some ice cream and stepped outside. Then he came back after about 10 minutes and ate dinner with Sally and the children.

The next day on 5th March 2020, Tom left home early at around 9:30am. In the past, Tom would get up early and leave home to go to work at around 9:30a.m, but since his dismissal from Lionel Chan’s Corporation, Tom would normally not wake up until 11:00 am. When she woke up, she saw that Tom had already left. She knew that he had taken the car with him because the car was not in the driveway. Sally wondered where he was going.

He returned at around 11am. Sally then asked Tom, “where did you go this morning?” Tom said, “oh I just went out to get some fresh air.”

At 12pm, some police came to the home and arrested Tom. Sally had no idea what was happening. The police then proceeded to search the premises and the car.

The next day on 6th March 2020, the police arrived at the home again. They arrested Sally for receiving in her account proceeds of an indictable offence. Sally had no idea about any money being deposited into her account. Under caution she remained silent. When later cautioned again in the police station, Sally continued to remain silent.

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
CRIMINAL CASE NO.54 OF 2020

HKSAR

V

TOM (1st accused)

HARRY (2nd accused)

SALLY (3rd accused)

Charged as follows -

First Count (against 1ST accused)

STATEMENT OF OFFENCE

Cap. 212
Sec. 42

Forcible detention of person with intent to procure a ransom, contrary to section 42 of the Offences Against the Persons Ordinance, Cap.212

PARTICULARS OF OFFENCE

Tom, between the 4th day of March 2020 and the 5th day of March 2020, both days inclusive, at xxx North Point, unlawfully detained Barry against his will, with intent to procure a ransom for the liberation of the said Barry.

Second Count (against 2nd accused)

STATEMENT OF OFFENCE

Cap. 455
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 Organized and Serious Crimes Ordinance, Cap. 455

PARTICULARS OF OFFENCE

Harry, on 5th day of March 2020, in Hong Kong, knowing or having reasonable grounds to believe that property, namely the sum of \$10,000,000 Hong Kong currency, in whole or in

Confidential

part directly or indirectly represented the proceeds of an indictable offence, dealt with the said property.

Third Count (against 3rd accused)

STATEMENT OF OFFENCE

Cap. 455
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 Organized and Serious Crimes Ordinance, Cap. 455

PARTICULARS OF OFFENCE

Sally, on 5th day of March 2020, in Hong Kong, knowing or having reasonable grounds to believe that property, namely the sum of \$10,000,000 Hong Kong currency, in whole or in part directly or indirectly represented the proceeds of an indictable offence, dealt with the said property.

(signed)

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

Date: 13th March 2020

To:	Tom	(1 st accused)
	Harry	(2 nd accused)
	Sally	(3 rd 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 18th March 2020.

.....
Registrar

**PERSONAL DATA
HONG KONG POLICE FORCE
TRANSCRIPT OF VIDEO RECORDING**

Report No.: RN 12099202

Central Police Station

Name of informant/witness : Barry *C.C.C. No.*
Age : 10
Sex : Male
Identity Document Type & No. : 
Address : 
Tel. No. : 
Occupation : NA
DOB : 
Nationality & Dialect : English
Taken by PC4938 *in* English *language from* 1815 – 1930 hours on 07-03-2020 at RHQ Room 155
Interpreter : --

A: Hello Barry. Do you know why you are here today.
B: Yes, I am here to give information on a case.
A: I'm going to ask you some questions. First how old are you?
B: Ten years old.
A: Where do you go to school?
B: Happy Primary School.
A: Do you play any musical instruments?
B: Yes I play the piano.
A: Do you take classes?
B: Yes
A: How often do you take classes?
B: Every day after school.
A: On 4th March 2020, what did you do after piano class?
B: I went to Paulo's.
A: Where is Paulo's?
B: It's in Central.
A: Why did you go there?
B: I wanted an ice-cream.
A: Who did you go with?
B: John
A: Who is John
B: My bodyguard.
A: Do you remember what time you went to Paulo's?
B: Around 6pm
A: Did you eat anything in the restaurant?
B: No

A: Why not?
B: I left the restaurant before the food came.
A: Hang on, let's talk about that.
B: Ok
A: Why did you leave the restaurant?
B: I saw Tom and he said he could get me some ice cream quickly and didn't have to wait.
A: Then what did you do?
B: I followed him out of the restaurant. I wanted ice cream.
A: Where was John?
B: He was in the bathroom.
A: Did you tell him you were going to leave with Tom?
B: No.
A: How did you know Tom?
B: He worked in my father's company, but I haven't seen him in a while.
A: Can you describe what Tom looks like?
B: Black short hair, medium build, about 1.7metres tall. He was wearing a white t-shirt and black trousers.
A: Then when you left the restaurant, where did you go?
B: I followed him to his car and then I got into his car.
A: Did you know where you were going?
B: No
A: Did you say anything to him in the car?
B: I asked him where the ice cream was. I asked him where we were going. I said I wanted to go back to the restaurant. But he ignored me.
A: Did you know where you went in the end?
B: Yes, his home.
A: Did he take you inside his house?
B: No – he took me into the garden shed in his backyard.
A: Why did you go there?
B: Because he told me to. He told me to sit down on the floor and wait.
A: Did you do that?
B: Yes I did – because he said he would bring me some ice cream.
A: Did he bring you the ice cream?
B: Yes he brought me the ice cream.
A: Where did you eat the ice cream?
B: In the garden shed.
A: Then what happened?
B: I started crying.
A: Why did you cry?
B: I told Tom that I wanted to go home. I did not like the garden shed.
A: What did Tom say to you when you said you wanted to go home?
B: He told me to give him my dad's mobile number. And then he would call my dad and ask him to pick me up.
A: Did you remember your daddy's number?
B: Yes I did and I gave it to him because I wanted to go home quickly.
A: He called your father?

B: Yes.

A: Did you hear what he said?

B: I can't remember clearly, but he asked my daddy for money otherwise I will die. Scary.

A: Then what happened afterwards?

B: He came back into the shed after the phone call and said that he would go back inside his house to sleep. I started to cry and told him to stay with me because I was scared of ghosts in the night.

A: What did he say when you said that?

B: He told me to calm down.

A: Then what did he do?

B: He left the shed and locked me inside the shed. I cried the whole night and kept shouting for help, but nobody heard me. I didn't sleep for the whole night.

A: When was the next time you saw Tom?

B: The next morning.

A: What did he do?

B: He came into the shed and asked me to go out with him.

A: Do you know why he wanted you to go with him?

B: Yes he said he was going to bring me to daddy.

A: Then where did you go?

B: He drove to a beach area, then he stopped near a bus stop. Then we waited in the car. Then I saw daddy.

A: Where was daddy?

B: I saw him walking towards the bus stop.

A: Then what did he do?

B: He threw a black bag in his hand into the rubbish bin.

A: What did you do when you saw daddy?

B: I wanted to get out of the car and run to him, but Tom locked it and wouldn't let me out.

A: Why did he not let you out of the car?

B: He said I needed to wait a while.

A: So what happened after?

B: We waited a while after daddy left and then Tom left the car and walked to the bin. He picked up the black bag from inside the bin.

A: Then what did Tom do?

B: He brought the bag back into the car and then drove.

A: Where were you going?

B: I didn't know, but we stopped outside a restaurant and he told me to get out.

A: What did you do?

B: I got out of the car. Then he left.

A: Then what did you do?

B: I stood outside the restaurant and then suddenly I saw daddy running towards me.

A: Did Tom hit you or hurt you in any way?

B: No.

A: How did you feel in the shed?

B: I felt scared.

-End-

**PERSONAL DATA
HONG KONG POLICE FORCE
STATEMENT/REPORT**

Report No.: RN 12099202

Central Police Station

Name of informant/witness : Lionel Chan *C.C.C. No.*
Age : 50
Sex : Male
Identity Document Type & No. : [REDACTED]
Address : [REDACTED]
Tel. No. : [REDACTED]
Occupation : NA
DOB : [REDACTED]
Nationality & Dialect : English
Taken by PC7934 *in* English *language from* 1815 – 1930 *hours on* 07-03-2020 *at* RHQ Room 158
Interpreter : --

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.....Lionel
Witnessed by--
Interpreted by--

1. I am the abovementioned person Lionel Chan. I am married. I was born in Hong Kong and have been educated up to secondary level.
2. I started my own business in the 1980s in the construction industry. I handle mainly construction projects for developers. Given the high demand in the property market, my business has soared over the years with the result that it is now a very successful listed company. I have a young boy Barry aged 10 years old.
3. As I am always very busy, I do not have time to pick him up from school and take him to his after school tuition classes. So I hired John to be Barry's bodyguard. John is an ex-army soldier in the American Army. Not only can John ensure that Barry is taken to where he needs to go, he is also protected from any potential danger with John present.

4. On 4th March 2020, I was working in my office as usual. I was about to leave the office at around 6:30pm when I received a call from John. John sounded very distressed on the phone. I asked him what was wrong and he said, “Mr Chan, I lost Barry! We went to Paulo’s because Barry wanted some ice cream! I went to the bathroom when we were waiting for the ice cream and when I came out, he disappeared. I can’t find him anywhere!”
5. I was horrified. Barry would not just disappear without saying anything. I knew that something was wrong. Before calling the police, I wanted to wait an hour to see if we would receive any calls about Barry’s disappearance.
6. At 7pm, I received a call on my mobile phone from an unknown caller. I picked it up and I heard Barry crying loudly and saying that he wanted to go home. Then I heard a deep voice on the phone, “Mr Lionel Chan, your son Barry is now with me. If you want him back alive, you need to prepare HK\$10million in \$1000 notes. I need you to put the money in a black gym bag and deposit it into the rubbish bin at A34 bus stop opposite Clear Water Bay First Beach at exactly 10am tomorrow morning. After I receive the money, I will call you and tell you your son’s location for pick up. If you don’t do as I say, your son dies. If you call the police, your son dies.”
7. I recognized that this deep voice belonged to a former employee of my company Tom. He was a security guard in my company. Every morning and evening I would pass by him at the entrance of my office building and we would always say hi. He has a very distinctly deep voice. However I did not want to tell him that I knew it was him, for fear of triggering any anger in him.
8. I was worried that this nasty man would harm my young boy, so I complied with his instructions. The next morning on 5th March 2020 at 9:30 I went out from my home to Clear Water Bay First Beach. I arrived at around 9:45 and parked the car. I walked over to the A34 bus stop opposite Clear Water Bay First Beach. This walk took about 15 minutes. At 10am I arrived at the rubbish bin by A34 bus stop and threw the gym bag with HK\$10million inside the bin. I then walked away back to my car.

9. 30 minutes later at 10:30am, I received a call from an unknown caller. It was the same male voice on the line, “Mr Chan, you can now pick up your son. He is outside Frank’s Diner by Clear Water Bay First Beach.” After I received this call, I immediately drove over to Frank’s Diner. There standing outside Frank’s Diner was Barry, alone and shaking.
10. I ran up to him and hugged him. Barry burst into tears and said, “Daddy! I’m so scared!”
11. As I was comforting Barry, a man walked up to me and said, “Hi Sir, I was sitting inside my restaurant when I saw a blue car dropping off your son. I thought there was something suspicious so I took down his registration number. Here it’s EH3456.”
12. I was very grateful to Frank for having copied down the registration number. After I took Barry to the Tseung Kwan O Hospital to see if he had any injuries, I passed this information about this vehicle to the police. They located the owner of the car as Tom.
13. Tom had been working at my company for over 40 years. However recently given the economic decline, I have made the decision to cut down on staff. He was dismissed as a result. Tom was very unhappy about the dismissal. He stormed into my office one day in February 2020 and demanded an explanation from me. Ironically I had to ask security to escort him away. I think Tom is a disgruntled former employee and wanted to take his anger out on me whilst make money out of my misery.

I have read the above statement, consisting of 3 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 12099202

Central Police Station

Name of informant/witness : John *C.C.C. No.*
Age : 35
Sex : Male
Identity Document Type & No. : [REDACTED]
Address : [REDACTED]
Tel. No. : [REDACTED]
Occupation : NA
DOB : [REDACTED]
Nationality & Dialect : English
Taken by WPC1018 in English language from 1815 – 1930 hours on 07-03-2020 at RHQ Room 156
Interpreter : --

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.....John
Witnessed by--
Interpreted by--

1. I am the abovementioned person John. I am single. I was born in Hong Kong and have been educated up to higher secondary level.
2. I am the bodyguard to Mr Lionel Chan's son Barry Chan. I have been at this job position for around 3 years since February 2017. My primary duty is keep Barry safe at all times. I stay with Barry at all times and accompany him to wherever. I am his morning shift bodyguard – my shift is from 8am to 8pm every day. At 8pm every day, another bodyguard Michael takes over from me – he is the night shift bodyguard.
3. On 4th March 2020, I took over from Michael and began my shift as usual at 8am. The day was generally uneventful. Until around 5:30pm after Barry finished his afterschool piano class, he suddenly said he wanted to have an ice-cream. So I asked the chauffeur to drive us to Paulo's in Central. We arrived at the restaurant at around 6pm.

4. When we went into the restaurant, I ordered an ice-cream for Barry. The service in the restaurant was slow – we waited for around 15 minutes and the ice cream was still not served. I suddenly felt that I needed to go to the bathroom, so I said to Barry, “Barry, I need to go to the bathroom quickly. Will you be alright out here alone for a minute before I get back?” Barry said, “yes of course Johnny.”
5. We were situated in the middle of the restaurant and the bathroom was near the entrance of the restaurant. As I walked to the entrance, I thought I saw Tom sitting in the corner of the restaurant. However, I could not be sure because of the dim lighting in that part of the restaurant.
6. After I came out of the bathroom a minute later, I went back to our table and found that Barry was nowhere to be seen. I asked the restaurant staff where he went, but they had no idea. I noticed that the individual in the corner of the restaurant was also gone. I remembered this clearly because at the time there was not a lot of people in the restaurant.
7. I panicked and looked at every part of the restaurant, hoping that Barry had just mischievously hidden under a table. However he was nowhere to be seen. I ran out of the restaurant to see whether he was outside. I saw outside a blue car driving past. There was a man in the driver’s seat with Barry in the passenger seat, but the car was driving too fast, so I did not see the registration number of this car.
8. I was extremely worried about Barry, so I called Mr Lionel Chan at 6:30pm to tell him what happened immediately after I could not find him anywhere. Mr Lionel Chan was shocked by the news, but he said that we should wait an hour to see if we hear anything before we make calls to the police.
9. I understood later on that Mr Chan received a call from an unknown caller at 7:00pm asking for a ransom in exchange of having Barry back. I am told later that on 5th March 2020, Mr Chan brought Barry back home after paying the ransom money. I know Mr Chan brought Barry immediately to the Tsueng Kwan O Hospital for a checkup.

10. When I went home on the evening of 4th March 2020, I could not sleep and stayed away the whole night waiting for news. As soon as I heard that Mr Chan picked up Barry outside a restaurant in Clear Water Bay and was going to Tseung Kwan O Hospital, I immediately went to meet them at the hospital.

11. When I arrived at the hospital, I saw that Barry was in a state of shock. He would not talk and would just stare into space. I know that the medical checkup did not identify any physical or internal injuries.

Q1: How did you know Tom?

A1: He worked as a security guard at Lionel Chan's Corporation. Sometimes Barry would visit his father at his office after school, we would often see Tom at the entrance of the office building. Sometimes we would stop and have a chat with Tom.

Q2: Why did you think it was Tom in the restaurant?

A2: Because the man in the restaurant have similar facial features to Tom, but I was not sure because the lighting was dim where he was sitting. I also was not sure because if it was indeed Tom, I would have expected him to come up to say hello to us.

Q3: What was the distance between you and where this male was sitting?

A3: About 8 metres.

Q4: Can you describe this man's physique?

A4: I cannot be sure how tall he was or what his build was because he was sitting down. I could only see that he was wearing a white T-shirt. He had short black hair.

I have read the above statement, consisting of 3 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 12099202

Central Police Station

Name of informant/witness : Frank *C.C.C. No.*
Age : 50
Sex : Male
Identity Document Type & No. : [REDACTED]
Address : [REDACTED]
Tel. No. : [REDACTED]
Occupation : NA
DOB : [REDACTED]
Nationality & Dialect : English
Taken by WPC6970 *in* English *language from* 1815 – 1930 *hours on* 07-03-2020 *at* RHQ Room 157
Interpreter : --

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.....Frank
Witnessed by--
Interpreted by--

1. I am the abovementioned person Frank. I am married. I was born in America and have been educated up to higher secondary level.
2. I worked as a chef for many years in New York, but one day I realized that I wanted a change of scene, so 10 years ago I decided to move to Hong Kong with my family. My wife and my 2 children have always supported my decision and we settled down in Clear Water Bay. I opened up my own restaurant in the same area called Frank's Diner.
3. On 5th March 2020 at around 10am, I was inside Frank's Diner preparing the restaurant for lunchtime. I was sitting inside the restaurant drawing up the lunch menu for the day. At around 10:15am, I looked out on the street and saw that there was a blue vehicle dropping up a young child. Because of the contrast in lighting and the reflection of glass, I could not see the driver of

the vehicle. However I felt that this was suspicious so I decided to copy down the registration number of this vehicle. The registration number of the vehicle is EH 3456. After the vehicle dropped off the child, it immediately drove away.

4. The young boy stood outside my restaurant all alone. He was shaking, but he kept silent and stared into space. I went outside and walked towards the boy. I wanted to bring him inside the restaurant, offer him some food and find out how to contact his parents. As I was about to catch the boy's attention, I saw a middle-aged man suddenly run towards him and hugged him. The young boy burst into tears and said to the man, "Daddy! I'm so scared!"
5. Having realized that the man is the boy's father, I gave him the registration number of the vehicle that I just copied down. The man said, "thank you very much for this – I will pass this on to the police for them to investigate!"

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 12099202

Central Police Station

Name of informant/witness : Raymond *C.C.C. No.*
Age : 30
Sex : Male
Identity Document Type & No. : [REDACTED]
Address : [REDACTED]
Tel. No. : [REDACTED]
Occupation : NA
DOB : [REDACTED]
Nationality & Dialect : English
Taken by PC4938 *in* English *language from* 1815 – 1930 *hours on* 08-03-2020 *at* RHQ Room 156
Interpreter : --

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.....Raymond
Witnessed by--
Interpreted by--

1. I am the abovementioned person Raymond. I am single. I was born in Hong Kong and have been educated up to university level.
2. I am the bank manager of Happy Bank (Central Branch). I have been working here for 7 years since my university graduation.
3. On 5th March 2020, I was working inside my office at the Central Branch as usual. At around 3:30pm, my colleague Rex came into my room and said that there was a client that wanted to deposit a huge amount of cash money into a bank account.
4. I went out to talk to the client. His name is Harry. He had with him a black gym bag. He told me that he wants to deposit HK\$10million into the account of his friend's wife Sally. I asked

him, “why do you have so much cash with you? Where did you get this money from?” He said, “My friend Tom gave this to me. He was recently dismissed from his job. Because he had worked in this company for over 40 years, his boss decided to give him a large sum of money for retirement. Tom needed to run some errands, so he asked me to deposit this money to his wife Sally’s bank account.”

5. I thought Harry’s explanation made sense and I did not think that there was any problem, so I deposited HK\$10million into Sally’s account on his behalf.

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-

The Questions

Question 1

Barry gave his account to the police in a video recording.

- a. Does Barry's unsworn evidence need to be corroborated? **[3 marks]**
- b. What are the different ways of adducing his evidence in Court? **[4 marks]**

Question 2

- a. After the arrest of Tom, the police did not conduct an identification parade so that Barry could identify the person who took him away. The Prosecution intends to conduct dock identification of Tom in the courtroom during the trial. As Tom's defence advocate, what are your concerns for dock identification? **[4 marks]**
- b. After the police obtained the hairs from the shed, government forensic scientists conducted DNA comparisons. They found that the two black hairs matched the DNA profile of Tom's hair sample and the one blond hair matched the DNA profile of Barry's hair sample. However, the Prosecution never produced any DNA report for the three hairs. If the Prosecution wishes to rely on DNA evidence in the trial, what steps does the Prosecution have to take before trial in ensuring such information would be admissible in Court? **[2 marks]**
- c. Lionel Chan gave evidence in court that he recognized the voice on the phone was Tom's voice. How is voice identification evidence dealt with in Court; and how does the fact that Tom was a former employee impact on this issue? **[4 marks]**

Question 3

Tom told you when he was detained, he was beaten up by the police officers and sustained severe bruises on his arms and legs. As his lawyer, what recourse would you advise him to take? **[1 mark]**

Question 4

You are the solicitor advocate for the Prosecution and you are considering asking Sally to give evidence against Tom.

- a. What are the general considerations for a spouse giving evidence for an accused? **[3 marks]**
- b. In this specific case, can Sally give evidence for the Prosecution against Tom? **[2 marks]**
- c. Would the considerations be different if the Prosecution later drops the charge against Sally? **[2 marks]**

Question 5

Tom later admits to you before the trial that he did commit the offence charged but insists that you continue to fight his case in a trial. As Tom's solicitor advocate, how does that affect how you conduct his case? **[5 marks]**

Question 6

Harry and Sally both elect to give evidence. You can assume that they gave evidence consistent with their versions of events stated in their respective Defence notes.

- a. Identify the limb of the mens rea test to be applied in the cases of Harry and Sally? **[2 marks]**
- b. You are the solicitor advocate for the Prosecution. How would you argue the issue of mens rea in the case of Harry in closing submissions? **[5 marks]**
- c. You are the solicitor advocate for the Defence. How would you argue the issue of mens rea in the case of Sally in closing submissions? **[3 marks]**

Question 7

The trial was set down for 20 days. At Day 15 of the trial, juror member Hamish left court to take the MTR. As he was in the Admiralty train station, he bumped in Harry, who was waiting for his train to arrive. Hamish went up to Harry and said, "you horrible man, I just found out about your previous criminal record of robbery." He then walked away. As Harry's solicitor-advocate, how would you deal with this issue? **[4 marks]**

Question 8

Sally is later convicted after trial. She is given a sentence of 3 years imprisonment on 18th May 2020. She intends to appeal against her conviction. Given how busy the court schedule is, she recently got notice that her appeal has been set down for March 2023.

- a. What are the considerations for bail pending appeal? **[2 marks]**
- b. As Sally's solicitor-advocate, how would you argue her application for bail pending appeal? **[4 marks]**

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