

**PCLL Conversion Examination**  
**January 2015**  
**Examiner's Comments**  
**Criminal Procedure**

**Part A**

**Question 1.1**

For this question students were expected to decide on the appropriate venue for the trial of this case, having regard to the 2<sup>nd</sup> schedule of the Magistrates Ordinance, and the likely sentence that the defendant would receive if he was convicted after trial. Taking the schedule alone, all three first instance courts had jurisdiction.

As with questions concerning jurisdiction in previous examinations, a number of students considered that because of the maximum sentence the appropriate trial court was the Court of First Instance; others chose the Magistrates Court. The correct choice was the District Court because the likely sentence after trial would exceed 2 years but not 7 years.

Most who selected the District Court as the proper venue mentioned the transfer procedure as provided for in section 88 of the Magistrates Ordinance.

**Question 1.2**

This question required students to analyze and apply the provisions of section 79C of the Criminal Procedure Ordinance to the facts, including the bases upon which the defence could oppose the use of the video as evidence in chief of the alleged victim; in this regard it was expected that reference be made to the use by the interviewing officer of leading questions. Whilst there was a proper basis for objecting to the admissibility because of the leading questions, the case law, including *HKSAR v. Chim Hon Man* [1999] 2 HKCFAR 145, provides in general terms, that if the alleged victim was a child of tender years it is more likely that the recorded interview in which leading questions were asked, would be admitted; in other words it is appropriate and sensible to illicit evidence from very young children by the use of leading questions.

It was important to note, and some students did so, that if the interview is admitted then it must be viewed by the judge in its entirety [see *HKSAR v. Lee Wang Lung* [2008] 1 HKLRD 474].

Few students mentioned Rule 4 of the *Live Television Link and Video Recorded Evidence Rules* which governs the procedure by which such evidence is to be admitted.

Overall, this question was poorly answered.

**Question 1.3**

This question was a straight forward one but overall the responses were unimpressive. Apart from knowledge of the procedure for and affect of admitting

evidence in accordance with section 65C of the Criminal Procedure Ordinance, the question required the application of a modicum of common sense.

The question concerned whether or not to admit three categories of evidence, namely, (i) the defendant's presence at the estate [he already admitted he was there, but not on the staircase where the offence allegedly occurred – there was no reason not to make this admission], (ii) the age and date of birth of the alleged victim [the defence was “I didn't do it” – there was no suggestion that the young boy had not been assaulted. These facts could be safely admitted], and (iii) the chain of evidence [which could be admitted save and except that admissions should not to be made concerning the video recorded interview with the boy, so as not to preclude a challenge to its admissibility in the trial].

Several students suggested that an admission should not be made in (i) because it would preclude running an alibi defence, which suggests that there would be no qualms on their part, about producing or encouraging false evidence, which is a little worrying for potential lawyers.

#### **Question 1.4**

The simple answer to this question was that the prosecution can appeal by way of Secretary for Justice's Review of Sentence, in accordance with section 81A of the Criminal Procedure Ordinance. Both leave to appeal from a single judge [usually the Chief Judge] and the application itself should be made within 21 days of the imposition of the sentence, unless the Court of Appeal extends time. Section 83Q was irrelevant to this question, but was mentioned by several students.

### **Part B**

#### **Question 2**

This question was mostly answered correctly i.e. it was an appeal by way of case stated in accordance with section 84 of the District Court Ordinance. Many however, wrongly stated that the Court of Appeal had the power to order that the trial be resumed, which was not strictly correct i.e. where the defence case at trial has concluded the Court cannot order that the trial be resumed.

#### **Question 3**

This again was a straight forward question. Whilst many answered it correctly, quite a few misread section 109I of the Criminal Procedure Ordinance concerning bind overs. The imprisonment mentioned in the section relates to the refusal to enter into the recognizance and not the breach of it.

#### **Question 4**

This question required a little bit of thought from students but also knowledge of the material. Many students missed the point completely, and covered all sorts of irrelevant topics rather than addressing the specific issues raised in the question.