PCLL Conversion Examination
January 2016
Examiner's Comments
Criminal Procedure

Part A

Question 1.1

A question on the admissibility of a confession. Most candidates scored something on this question, but many simply discussed the case law and common law "voluntariness" issues contained in well-established authorities such as *R v Ibrahim.* Some also correctly referred to the Judge's residual discretion to exclude any evidence obtained unfairly. Such answers were given some credit. However, the question mainly required students to analyse the Rules and Directions (particularly Rule VI) which was exactly on the point. Here, another person has implicated another defendant in their own police statement. Many answers simply referred in general terms to the Rules and Directions without specifying which particular rule was in issue, or relating it to the facts. Also, most candidates referred to the voir dire as the means for determining the issue of admissibility, whereas it would actually be conducted by way of the alternative procedure in the Magistrates or District Court.

Question 1.2

The vast majority of candidates identified the wrong trial venue by overestimating the seriousness of the offences. Whilst most answers correctly identified section 3C 2 (ii) JOO Cap. 226, as the relevant provision for the joint trial (despite Sammy being a juvenile) many wrongly stated that Sammy and Fanny were jointly charged. They were charged with different offences. The correct answer was to point to the link or connection between the theft charge and the handling charge, which would allow for a joint trial.

The relevant trial court was the Magistrates Court, given the relatively low level crimes and the ages of the two defendants, which would restrict the Court's sentencing options. Neither Sammy nor Fanny were at risk of custodial sentences above two years. The trial court was therefore neither the District Court nor the Court of First Instance. For some reason, most candidates simply stated that the sentence

would be more than two years for each defendant and that the District Court was appropriate. Some candidates simply took the maximum sentence for the offences and identified the case as triable in the Court of First Instance. The procedures for transfer and sometimes committal were then explained in detail. These are basic errors, which unfortunately seem to occur time after time. Very poorly answered by most candidates.

N.B. It is not acceptable for candidates to mention two or even three courts in the hope that so long as the correct trial venue is mentioned somewhere, the marker will give appropriate "jurisdiction" credit. Where venue is clear, no credit will normally be given for candidates who hedge their bets in this way.

Question 1.3

This question related to the reliance by the prosecution on a section 65B of the Criminal Procedure Ordinance, Cap 221 written statement, as Eric the witness was likely to be incapacitated for a long period and would likely be unable to attend trial. Most candidates correctly identified the correct provision. Some candidates confused section 65B with section 65C relating to admissions of fact. These students got no credit.

However, having identified the correct section, candidates were then expected to analyse the facts and state whether Sammy's lawyer should object to the prosecution notice under section 65B. Given that Eric's statement did not implicate Sammy at all (and actually supported his defence in respect of his never having been to Eric's home) there was no need to serve any notice of objection within 14 days. Many students believed that cross-examining Eric would assist Sammy's case. This course of action would be very risky.

Question 1.4

All that was required here was reference to the provision of section 3F (1) of the Juvenile Offenders Ordinance Cap. 226. The trial magistrate would simply remit Sammy's case (along with a certificate identifying Sammy's role) for sentence to the Juvenile Court. There were no reasons to make such course of action undesireable, and Sammy would benefit from the lower sentencing powers of the Juvenile Court.

The question did not require discussion of the likely sentence for Sammy. Despite that, many candidates wrongly trawled through a list of potential sentences. The question simply asked what would happen to his case. This question was generally poorly answered and a significant proportion of candidates scored zero marks.

Part B

Question 2

Generally, reasonably answered. The question required a discussion of the provisions of review (s104), case stated appeals (s105) and alternative procedure appeals (s113) Magistrates Ordinance Cap. 227. Some candidates only chose one or two routes for discussion. This scored proportionate credit only. Others referred to all three options but did not make clear the most preferable challenge to the decision. Generally the section 104 application should be made first. Candidates lost a mark if they did not indicate the appeal/review time limits in their answer. A handful of candidates referred to the provisions relating to appeals to the Court of Appeal. This was completely wrong.

Question 3

Along with question 4, this was the question which produced the best answers. Nearly all students identified the *Newton Inquiry* as the appropriate procedure to adopt. Candidates lost the odd mark here or there, for not discussing (amongst other things) the need to attempt to agree facts first, the need for the difference in facts to make a difference to sentence, the basis for the judge or magistrate's sentence at the end of the inquiry, or the risk of a reduced sentencing discount after the guilty plea, in the event of an unsuccessful hearing.

Question 4

Again this question was well-answered generally. Candidates mostly identified the main factual situations when an acquitted defendant may be denied costs by the court. The better answers made specific reference to the cases including *Tong Cun Lin v HKSAR* (1999), *HKSAR v Dove* (1998) and *Tse Mun Chun v HKSAR* (2004). This was better than a mere recital of the principles. Where candidates discussed costs issues outside the limited requirements above (e.g. reference to section 19 of the Costs in

Criminal Cases Ordinance Cap. 492 and appealing costs orders) no credit was awarded.

Some final comments

The general standard of answers was no more than average for this particular examination. There were very few excellent scripts, showing consistently high marks throughout the seven individual parts. Most candidates fell down somewhere along the line. The general procedure questions of Part B were generally much better answered than those of the long-fact pattern Part A. Fortunately for them, many candidates managed to resurrect their chances of passing the exam after a very poor showing in part A, by providing good answers to part B.

A final reminder to candidates again to make use of the past papers and past examiner's reports which are available to them. The format for the examination is the same every time, and by taking on board the most common mistakes that have been made by previous candidates, those most basic of errors (e.g. questions on venue) should be avoided.

It was also apparent that some students had not even read the Ordinance attachments, provided to them alongside the question paper. I'm afraid this is asking for trouble.