

**PCLL Conversion Examination**  
**January 2017**  
**Examiner's Comments**  
**Criminal Procedure**

**Part A**

**Question 1.1**

This question concerned police powers to detain, question and arrest under the Police Force Ordinance and the 1992 Rules and Directions for the Questioning of Suspects and the Taking of Statements. Most candidates were able to discuss the powers to stop and detain a suspect under section 54 of the PFO and the need for the arresting officer to have formed a reasonable suspicion that an offence had occurred at the time of the defendant's arrest.

As far as case law was concerned, a number of candidates referred to *Yueng May Wan and Others v HKSAR* (2005) however, despite a similar issue appearing on the 2016 paper, a substantial number erroneously equated a reasonable suspicion with a prima facie case that the defendant had committed an offence. Also concerning was the number of candidates who overlooked the need for a rule 2 caution to be given to the defendant after she had admitted she was carrying dangerous drugs. Rule 2 requires a police officer to give a caution as soon as he has enough evidence to afford reasonable grounds for suspecting the person being questioned has committed an offence. The facts called for a discussion of the timing of the caution and whether the defendant had been prejudiced by the late caution. Very few candidates considered whether the late caution had prejudiced the defendant and the consequences to the admissibility of her admissions.

**Question 1.2**

This question concerned the right of the defendant to challenge the post recorded statement on the basis that she had been induced to sign by the police promise of bail. A disappointing number of candidates spent time discussing admissions under section 65C of the CPO (and, in some cases, s65B). The question did not require reference to the CPO, but did invite discussion of case law, which was noticeably scant.

Those candidates who relied on case law mentioned *R v Ibrahim* but little else and there was insufficient discussion and application of the common law rules governing the admissibility of involuntary statements. While many went on to discuss the methods for challenge (voir dire or alternative procedure) few took the initiative to clarify that as the case would certainly be tried in the CFI, an alternative procedure would not be possible. The burden and test for admissibility was also largely ignored.

**Question 1.3**

This question was very poorly done, with many candidates failing to understand the significance of an offence which can be tried by the Department of Justice in two ways (under section 4(3) DDO). Despite the option to charge the offence under section 4(3) (a) or (b), a case will only be tried in the magistrates' or District court if the tariff is within the court's jurisdictional range. Confusion about the correct

application of the second schedule to the Magistrates Ordinance and where drug trafficking can properly be tried was also widespread. Even where candidates applied the correct tariff case for ketamine (SJ v Hii Siew Cheng [2008] 3 HKC 323) some still wrongly put the case in the District Court and therefore overlooked the need to discuss the committal process. Also of concern was the mistaken conception that a defendant's mitigating factors would be taken into account when the venue was chosen by the Department of Justice for the trial.

#### **Question 1.4**

Most candidates who read the question properly had no problems in answering this question. Many, however, mistakenly wrote on how to appeal against the defendant's conviction, when the question only required discussion of an appeal against her sentence. Much time was wasted on lengthy discussion of conviction appeals. A few candidates did not realise that the appeal would be heard in the Court of Appeal, some placing it in the CFI and in a few cases the CFA. The question was an easy one and candidates should take care to ensure they read the question carefully rather than rely on pre-prepared answers.

#### **Part B**

#### **Question 2**

This question required students to consider ways the prosecution can assist a 12 year old witness to give evidence in a violent assault case. Many students simply discussed the possibility that the child might be defined by the court as a 'witness in fear' without considering the possibility of using pre-recorded evidence for his examination in chief and CCTV link for his cross examination. Where sections 79B and 79C of the CPO were discussed, text was often copied from generalised notes on vulnerable witnesses in all kind of cases without application to the age of the child and type of case described in the question posed. The possible use of s79E was also largely overlooked.

#### **Question 3**

This question was largely well done with candidates correctly identifying differences between Detention Centres and Training Centres involving age, sex, residency, duration of detention, purpose of punishment and post release supervision powers.

#### **Question 4**

Candidates seem to have been taken by surprise by this question (with some not answering it at all). The examiners were looking for a discussion of the Court of Appeal's power to deter unmeritorious appeals by ordering loss of time from the sentence served under section 83W CPO. Candidates largely ignored s83W and discussed the statutory grounds on which an appeal can be made (which did not strictly answer the question), wasted costs orders and the appeal court's power to award costs generally. Sensible discussion was awarded credit.