

**PCLL Conversion Examination
January 2018
Examiner's Comments
Criminal Procedure**

Part A

Question 1.1

This question is designed to test the candidates' knowledge of police power under various subsections of section 50 of the Police Force Ordinance. In answering the question, the candidates over focused on analysing the issue of what amounts to "reasonable suspicion" whilst overlooking the central issues. Other important aspects of the question such as, firstly, police power of arrest without warrant and secondly, police power of entry into private premises without warrant were not adequately dealt with. Some students were able to analyse the former issue followed by applying the relevant law to the facts. A large number of students however, were unable to demonstrate a clear understanding of the latter which is governed by sections 50(3) and (4) of the Police Force Ordinance. In particular, the candidates had difficulty in applying the relevant provisions to the facts provided.

Question 1.2

This question is relatively straight forward and does not involve discussion of complicated legal concepts. The candidates were required to explain that a suspect is not compelled by law to attend the identification parade. The court should not draw adverse inference against the suspect for his refusal to take part in the identification parade. Only a small number of candidates failed to come up with correct answers to this question.

Question 1.3

This question calls for a demonstration of understanding, on the part of the candidates, in respect of police power to stop, detain and search suspects in a public place. Most of the candidates had shown that they were unable to distinguish the difference between sections 50 and 54 of the Police Force Ordinance. The confusion is evident from the fact that a lot of candidates applied the same legal concepts in Question 1.1 to this question. As a result, they failed to apply their mind on section 54 of the Police Force Ordinance, which is the focal point of this question.

Question 1.4

The question is concerned about the Rules and Directions for the Questioning of Suspects (the Rules). The candidates were capable to pinpoint the implications under Rules IV and V of the Rules. The majority of the candidates omitted to address the issue that D2, being a person under the age of 16, should only be interviewed by the police in the presence of a parent or guardian. Almost all of the candidates failed to point out the need to serve a Notice to Persons in Police Custody prior to taking the Record of Interview.

Part B

Question 1

The candidates were quick and correct to answer one of two main parts of the question regarding the circumstances under which a Community Service Order may be imposed against an offender. The candidates had done poorly in explaining what a Drugs Addiction Treatment Centre Order is all about.

Almost all candidates completely overlooked to explain the need for the court to convict the offender in the event of making a Community Service Order. The candidates also fell into error by not addressing the issue that the court has a discretion not to record a conviction against an offender when making a Drugs Addiction Treatment Centre Order.

Question 2(a)

Most students had not been able to distinguish the fact that an appeal by way of case stated can only be brought by the Secretary of Justice on a point of law. Much of the time was spent in discussing the procedure for the defence to appeal against its conviction or sentence which is not the issue of the question.

Question 2(b)

This question was well handled by the majority of the candidates possibly because the relevant provisions under the Magistrates Ordinance are not difficult to comprehend.

Question 3

This question was most poorly done amongst the entire Conversion Examination paper. The issue in question was not properly identified. The students had not been able to pinpoint that the bail pending appeal procedures are set down in Criminal Procedure Ordinance, let alone being able to correctly identify the relevant provision, being section 83Q/83R.

Most students evidently mixed up the concepts between appealing to the Court of First Instance and applying to the Court of Appeal for bail pending appeal.