

**PCLL Conversion Examination**  
**January 2019**  
**Examiner's Comments**  
**Criminal Procedure**

**PART A**

**Question 1.1**

The majority of responses here were let down by an inadequate application of the facts to the law. This question required students to discuss whether Freddie had been properly informed of reasons for arrest. The question called for a fuller analysis of the circumstances that should be borne in mind when reviewing a person's arrest. While some students cited the case of *Christie v Leachinsky*, few went into any detail as to scope of information that must be given upon arrest. Ultimately, while the arrest looked problematic on its face, almost no students highlighted that Freddie's complaint that he was not informed of reasons, is considerably weakened if he produces a situation which makes it impossible to inform him. A number failed to give sufficient emphasis to his confrontational and aggressive demeanour, which was compounded by a drunken state.

Knowledge of the Rules and Directions was important here. In particular, students should have raised the importance of Rule II in this scenario, which would have helped them to identify the point at which the caution should have been administered. Students were awarded marks where they referred to case law such as *Lee Fuk Hing v HKSAR* (2004): "...suspected persons in Hong Kong should be- and routinely are-given a caution informing them in unqualified terms that they need not speak."

**Question 1.2**

Very few students were able to correctly identify the relevant obligations that arose at this juncture. Section 51 PFO requires that every person taken into custody by a police officer shall be forthwith delivered into the custody of the officer in charge of a police station. Even where this provision was highlighted, the rationale was seldom explored. This feature gives an arrested person some protection in that he may complain against any unfair treatment to the officer in charge of the police station (i.e. the Duty Officer) who is not part of the arresting team. That appears crucial in light of the episode leading up to Freddie's arrival at the police station.

**Question 1.3**

A good number of students were able to direct the examiner towards the Rules and Directions in answering this question. Curiously, however, the majority ignored the preamble to the Rules and Directions. The preamble should have been relied on as it contains important guidance for dealing with the factual scenario presented. Many went on to identify rules that were not directly applicable.

**Question 1.4**

Direction 8(b) should have been mentioned here. Some students (without referring to

this specific Direction) were able to raise the point that a lawyer advising his client not to make a statement should not in itself be treated as a ground for delaying or preventing communication between the solicitor/barrister and the person in custody. In general though, full marks were awarded for this question.

### **Question 1.5**

This answer was poorly handled. It was apparent that students often did not truly grasp the trial procedures in place. This would be dealt with on the return date but in giving their answers students revealed their own confusion as to what that actually means and when it occurs. Examiners do not appreciate the strategy of a student copying as much material they can on a topic in the hope some of its contents will be accurate. This approach merely reflects a lack of understanding of any given topic. A small minority of students identified that there is no power allowing a summary offence (i.e. s.63 PFO) to be committed to the CFI (even where the summary offence is taken alongside an indictable offence – see s.80A & s.80C CAP.227).

### **Question 1.6**

A surprising number of students did not engage with what should have been a relatively straight-forward question. Instead the impression given was that pre-prepared answers on bail were given instead, again, demonstrating a lack of understanding on this topic. Having said this, a good number of students were awarded full marks.

## **Part B**

### **Question 2**

The response to this question underscored the pitfalls of copying down information on a topic without proper application of the facts. Whilst many students correctly identified the relevant direction of Turnbull, fewer went on to apply each of the Turnbull considerations to the circumstances contained in the question. Highest grades went to those students who both applied the facts and went on to explain that the judge was not required to mention the case of Turnbull by name, provided it is clear from the Reasons for Verdict that he has exercised all appropriate caution and has examined the circumstances in which Sally came to make the identification.

### **Question 3**

There was a range of answers supplied here. A common trend was failure to focus on the question asked and instead write down copious detail on all appeal mechanisms that came to mind. Key points for students to highlight included that the Prosecution can seek a review of sentence under s.81A CPO. Review is to the Court of Appeal. The right of the SoJ to seek a *review* of sentence from all courts i.e from MC, DC and CFI under s.81A(1) CPO on the grounds that it was: not authorized by law; wrong in principle; manifestly excessive; manifestly inadequate. The leave of the CA is required on review. It was common for students to incorrectly state the relevant time frame for the SoJ (21 days from sentence). Highest marks were given where students

answered that the SoJ's right to refer a question of law to the CA following an acquittal comes under s.81D CPO.

#### **Question 4**

Most students failed to distinguish between a criminal record and the antecedent statement. Furthermore, the question asked what in what court(s) would it be referred to, and at what stage of proceedings? Many did not address this properly. Students should note that antecedent statements are not taken in all cases, but usually for those cases to be heard in the CFI or DC. They are not normally read out in cases heard before a magistrate.

#### **Question 5**

This question was well handled by a good number of students possibly because it required little analysis. Some answers confused the respective roles of Prosecution and Defence. Very few students explained what the burden on each party was during a Newton hearing and how the judge decides the matter being contested.