

PCLL Conversion Examination
June 2017
Examiner's Comments
Criminal Procedure

Part A

Question 1.1

This question concerned the admissibility of an alleged admission to police at the hypothetical client's trial. The client denied making the admission but made no challenge to the validity of the police caution. He did not claim he was treated unfairly by police. Accordingly, there was no suggestion that the admission was involuntary. The client simply claimed the admission was never made.

In these circumstances, *Thongjai v The Queen* is authority that there is no need for a voir dire or alternative procedure at trial. The court can make a finding based on witness credibility. Many candidates realised this and were quick to point out that a voir dire/alternative procedure was unnecessary but some erroneously argued that despite the client's instructions, the test for admissibility was still required.

Question 1.2

This question concerned the court of trial. Most candidates were able to identify the magistrates' court as the only appropriate venue. Most were also able to identify the appeal provisions under the Magistrates Ordinance but a number failed to go on to mention the Court of Final Appeal as the venue for a further appeal from the Court of First Instance. A disappointing number were confused about the further appeal process and suggested the conviction could be appealed to the Court of Appeal.

Question 1.3

This question was quite poorly done, with many candidates failing to come to terms with the question of whether to challenge the photographs and sketch. While care should be taken to first assess the accuracy of the photos and sketch, they could probably be safely included in the Admitted Facts. An accurate sketch or set of photos showing the layout of the race course and where the eggs were found could not sensibly be denied and would not undermine the defence suggested by the client. Many candidates generalised their answers without addressing the facts; either taking the view that requests for facts to be admitted under s65C should always be denied, no matter what the content, or that they should always be admitted (for fear of cost consequences), even when they were likely to undermine the client's defence.

Question 1.4

The question was very poorly done with most candidates failing to realise the consequences of the client having been handed over to police, by the security guards, at the scene. The identification of the client at trial was a confirmation of an earlier identification at the scene, and not a first time dock identification. Much time was wasted on discussion of dock identification case law that could have been spent

focussing on the Turnbull considerations, which were scantily addressed and in a large number of cases, completely overlooked.

Part B

Question 2

This question was handled with ease by most, although some prepared answers demonstrated that candidates did not actually know what admitting the chain involved, and thought it was some form of real evidence (such as a video tape).

Question 3

This question was poorly done with many candidates failing to recognise the power under section 2 (1) (a) of the Rehabilitation of Offenders Ordinance, Cap 297, to have some convictions spent after three years. Many candidates wasted time discussing discounts for pleas in mitigation, community service orders and probation (none of which were applicable).

Question 4

This question was handled competently by most, although a number of students failed to answer it suggesting problems with time management.