

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

**Part A**

**Question 1.1**

This question is designed to test the candidates' understanding of police power under sections 50 and 54 of the Police Force Ordinance, Cap. 232. The topic on police power to stop, search and detain suspects in a public place has commonly appeared before in most Conversion Examination of previous years. Many candidates were quick to identify the issues. Some, however, were unable to apply the legal principles, as set out in Yeung May Wan, FACC 19/2004, to the Fact Pattern in a succinct manner. In the course of answering the question, candidates often repeatedly copied out the facts of the case whilst failing to analyse the issues in their own words. As a result, the papers were marked down considerably.

**Question 1.2**

The question calls for a demonstration of understandings in respect of the jurisdiction of juvenile court as well as joinder of defendants and charges. Most candidates were able to explain, for example, the implications of section 3C (1) of the Juvenile Offenders Ordinance, Cap. 226, but a number failed to go on to explore its exceptions (i.e. section 3C (2)).

**Question 1.3**

This question is focused on section 59 (1) (a) and (b) of the Police Force Ordinance, Cap. 232. It does not require the candidates to engage in discussion of complicated legal concepts. Surprisingly, many candidates had simply relied on their common sense in answering the question without pointing out the legal basis on which the police exercised their power in collecting such samples. Students are advised to familiarize themselves with this section of the Police Force Ordinance which concerns with the proper exercise of police power in collecting finger-prints and photographs etc. from suspects.

**Question 1.4**

The question evolves around testing the candidates' understanding of the meaning of an "excepted offence". A large number of candidates had failed to discuss the interplay between judiciary's sentencing discretion and the legislature's constraints on such discretion.

## **Part B**

### **Question 1(a) and (b)**

A Drug Addiction Treatment Centre Order is one of the most common sentencing options available to the courts. This question would have been a straight forward one had the candidates been able to understand some of the basic provisions as stipulated in sections 2, 4 and 6 of the Drug Addiction Treatment Centre Ordinance (DATCO), Cap. 244. It seems however that many candidates were completely unaware of the importance of the DATCO. It was disappointing that the answers provided by most of the candidates were based apparently on speculations rather than knowledge. Overall speaking, this question was poorly handled by the candidates.

### **Question 2**

The crux of the question is whether Candy did utter the verbal admissions as alleged. It is a matter of credibility between Candy and the police officer. The issue will be assessed by the jury during trial proper and not by way of voir dire. Some of the candidates had unnecessarily focused their mind on analysing the Rules and Directions for the Questioning of Suspects and overlooked to deal with the focal issue, which is a question of fact to be left to the jury to decide.

### **Question 3**

The answers to this question are mainly divided into 2 parts. An application for bail pending appeal may be made to the trial magistrate pursuant to sections 119 (1) (a) and 122 (1) of the Magistrates Ordinance, Cap. 227. Edmond may also apply to a judge of the Court of First Instance for bail pending appeal. This question was very poorly handled by a high number of candidates.