

PCLL CONVERSION EXAMINATION, JANUARY 2015

Title of Paper : Criminal Procedure
Date : 7 January 2015
Time : 9:30 a.m. – 9:45 a.m. (Reading Time)
9:45 a.m. – 12:45 p.m.

Instructions

1. Write your **candidate number** on the cover of each answer book. Do **NOT** write your name in the answer book.
2. Start each answer on a separate page of the answer book.
3. Write your answers only in the answer books provided.
4. This is a three-hour examination.
5. This is an open book examination.
6. Reading time for this paper is 15 minutes. Do **NOT** begin writing in your answer books during this period until you are instructed to do so.
7. This paper consists of 4 pages, including Part A and Part B. A total of 50 marks may be awarded.
8. Part A contains one compulsory question with four sub-sections. The question contains no element of choice. Candidates should attempt all four sub-sections in the order in which they appear on the paper. Part A is worth 30 marks.
9. Part B contains three short questions. This part also contains no element of choice. Candidates must answer ALL three questions. Part B is worth 20 marks.
10. The passing mark for this paper is 25 marks.

**DO NOT OPEN THIS QUESTION BOOK
UNTIL YOU ARE TOLD TO DO SO**

PCLL Conversion Examination January 2015

Criminal Procedure

PART A (30 marks)

Long Fact Pattern

Question 1

Your client is a 25 year old man named Chan Yuen Fai. He has been charged with two counts of indecently assaulting a 4 year old boy, an offence against section 122 of the Crimes Ordinance, Cap 200. The prosecution case is that on 2 December 2014 at about 10:30 am, the boy "X", with approval from his grandmother, was playing with a video game machine on his own in a shop on the podium of Lee Garden House. An hour later X was found missing, resulting in police investigation.

At about 12:30pm the same day, X returned to his residence at 6/F of Lee Garden House. When questioned by his grandmother, X said that a man took him to the staircase of Lee Garden House where he forced X to kiss his penis for about a minute. X started to cry and the man stopped for a few minutes to comfort him. The man then forced X to kiss his penis again and ejaculated in X's face. The man then let X go home. On the afternoon of the offence, your client, who recently moved into a flat on the 17/F of the Lee Garden House was arrested. Your client has a history of indecently assaulting children. Under caution, he told the police that he had been home alone at his flat all morning. He then refused to answer any further questions.

Question 1.1

Your client will make his first appearance at the magistrates' court tomorrow. Identify the likely court in which his case will be tried and any application the prosecution would need to make to the court. Give reasons for your answer.

(7 marks)

On the day of the incident, X made a statement to a police officer in which he described what had happened. That statement was video recorded. X is extremely traumatized by the event and the prosecution has alerted you that they intend to play the video statement in court instead of leading evidence in chief from X at trial. You have watched the video and the police officer who questioned X in the video interview, has asked X some leading questions.

Question 1.2

Can you, and should you, object to the admission of the video? Give authorities for your answer.

(8 marks)

The trial is listed to commence next month. You have received requests from the Prosecution to admit the presence of the Defendant at the Lee Garden House at the material

time, the chain of evidence in relation to the exhibits in the case and the age and date of birth of X.

Question 1.3

How would you advise your client to respond to these requests?

(8 marks)

At the end of the trial, your client was convicted and sentenced to 18 months imprisonment. The prosecutor is very unhappy with the sentence.

Question 1.4

Is it possible for the prosecution to appeal the sentence given? Where would such an appeal be heard and what requirements would need to be complied with? Identify any relevant sections of the Hong Kong legislation in your answer.

(7 marks)

PART B (20 marks)

Short Answer Questions

These questions are NOT based on the above Long Fact Pattern.

Question 2

Can an acquittal by a judge of the District Court be appealed? Give authorities for your answer.

(7 marks)

Question 3

What are the differences between the consequences of breaching a bind over to be of good behavior for 12 months (fortified by a recognizance) and breaching a sentence of 12 months imprisonment suspended for 2 years?

(6 marks)

Question 4

On what basis might a court review the Secretary for Justice's decision to institute criminal proceedings? Give authorities for your answer.

(7 marks)

~ End of Examination Paper ~

(1) Subject to subsection (3), a person who indecently assaults another person shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for 10 years.

(2) A person under the age of 16 cannot in law give any consent which would prevent an act being an assault for the purposes of this section.

(3) A person is not, by virtue of subsection (2), guilty of indecently assaulting another person, if that person is, or believes on reasonable grounds that he or she is, married to that other person. (Replaced 90 of 1991 s. 7)

(4) A woman who is a mentally incapacitated person cannot in law give any consent which would prevent an act being an assault for the purposes of this section, but a person is only to be treated as guilty of indecently assaulting a mentally incapacitated person by reason of that incapacity to consent, if that person knew or had reason to suspect her to be a mentally incapacitated person. (Amended 81 of 1997 s. 59)