

PCLL CONVERSION EXAMINATION, JANUARY 2016

Title of Paper : Criminal Procedure
Date : 6 January 2016
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 8 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 2016

Criminal Procedure

PART A (30 marks)

Long Fact Pattern

Question 1

You are a solicitor in the firm of Chan and Co. You received a call from a previous client of your firm Lucy Chan. Lucy informed you that her son Sammy aged 15, had just been arrested by the police for handling stolen goods. You agreed to accompany Sammy during the police interview, at which Lucy would also be present.

You managed to discuss the case with Sammy later that afternoon before the police interviewed him and you reminded Sammy of his rights. Sammy told you that three weeks ago his cousin Fanny aged 20 came to McDonalds where Sammy currently works as a part-time assistant and showed him a Rolex watch, which she said she had recently stolen from a neighbour Eric, whilst she had been babysitting for him. Sammy is rather terrified of Fanny who is much bigger than him. He told you that she has bullied him many times in the past. Fanny told Sammy to sell the watch and they would split the proceeds, adding, "do this or else you'll get a hiding". Sammy sold the watch later that week to a watch dealer Alex in Sheung Wan for \$15,000.

Sammy was arrested along with Fanny, due to the fact that Sammy had repeated what he said had happened to a colleague at work. The colleague had then reported the conversation to the police.

Eric was contacted by police, and gave a statement in which he clearly identified the watch as his own property. His initials were engraved into the case. He thought he had simply misplaced it, as he had done several times before, and was both surprised and delighted when the police showed him the watch which was in their possession. He couldn't remember when he last saw his watch, but he stated that Fanny had looked after his daughter on many occasions during the previous month when he had been working late. He could not remember any specific dates as to when she had been to his premises though. At no time had Sammy ever been to his apartment, to his knowledge.

When you arrived at the police station to represent Sammy, you discovered that Fanny was unrepresented. She had already been interviewed though, having declined legal representation and in her interview she denied ever having stolen a watch, saying that whilst she was babysitting for Eric's daughter recently, Sammy had visited her and it must have been he who had in fact stolen the watch whilst Fanny was otherwise engaged. She knew nothing about the watch until she was recently arrested by police. At the end of the interview Fanny was cautioned and charged with one offence of theft contrary to section 9 of the Theft Ordinance, Cap 210. She was granted cash bail.

You advised Sammy at this stage to give a no comment interview and exercise his right to silence. At first, Sammy followed your advice and said nothing in response to police

questions. Then one of the interviewing officers showed Sammy Fanny's interview record. He informed Sammy that due to the detailed account given by Fanny, which clearly implicated him, he might as well confess. He told Sammy the police had enough evidence from Fanny's statement alone to prosecute him for theft, contrary to section 9 of the Theft Ordinance Cap 210. Sammy immediately said he would tell the police what really happened and he described how he had sold the watch to Alex. Sammy was later charged with one offence of handling stolen goods contrary to section 24 of the Theft Ordinance, Cap 210. He was released on unconditional bail.

Question 1.1

Sammy wants to know if it is possible, at trial, to withdraw his admission to the police about selling the watch to Alex. Advise him of any challenge that can be made to this admission and how such a challenge would be determined by the court.

(8 marks)

Question 1.2

You received notification that the case is listed for a court hearing very shortly. This is the first appearance for both Fanny and Sammy. It is your understanding that both Sammy and Fanny will be pleading not guilty. Insofar as Sammy is concerned he will plead duress. Both are of previous good character.

Which court will be dealing with the case on the first appearance and which court will be the venue for any trial in due course? What application might the prosecution make tomorrow?

(10 marks)

Question 1.3

The case has now been listed for trial, which is due to take place shortly. The prosecution has recently received a letter from Eric's wife indicating that he is seriously unwell and is likely to be in hospital for several months. He will be unable to attend a trial for at least a year.

What course of action will the prosecution most likely adopt now with regard to Eric's evidence and how are you likely to respond to them as Sammy's lawyer.

(6 marks)

Question 1.4

During the trial Fanny and Sammy gave evidence and blamed each other for the theft. The prosecution put the case essentially on the basis of willing complicity between the two of them, with Fanny as the thief and Sammy as the receiver of the watch. The court found both of them guilty. They are both convicted of the offences for which they were respectively charged. Fanny's case is adjourned for sentence pending reports.

What is the most likely course of action that the court will adopt now with regard to your client Sammy's case?

(6 marks)

PART B (20 marks)

Short Answer Questions

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

Question 2

On 4th January 2016 your client was convicted by the magistrate of one offence of possession of an offensive weapon contrary to section 33 of the Public Order Ordinance Cap 245. The evidence against him was that during Occupy Central protests police had cause to search him and found in his back pocket a plastic knife, normally used as cutlery in Café de Coral where he works as a chef. Your client told the court that he was taking the knife home for his personal use, as he was short of cutlery. You believe the magistrate made an obvious error when convicting your client, and you also do not accept that such a knife could possibly be found to be an “offensive weapon” according to the above Ordinance.

What are your options now with regard to your client’s conviction? (8 marks)

Question 3

What should you do if you are representing a client who wishes to plead guilty to an offence, but who does not agree with the prosecutor’s version of the facts as charged? (6 marks)

Question 4

When might a privately funded client be acquitted of an offence after a trial, but still not receive an order for costs in his/her favour? (6 marks)

~ End of Examination Paper ~

Chapter: 210  Title: **THEFT ORDINANCE** Gazette
Section: 9 Heading: **Theft** Number:
Version Date: 30/06/1997

THEFT, ROBBERY, BURGLARY, ETC.

Any person who commits theft shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for 10 years.

Chapter: 210  Title: **THEFT ORDINANCE** Gazette
Section: 24 Heading: **Handling stolen goods** Number:
Version Date: 30/06/1997

OFFENCES RELATING TO GOODS STOLEN, ETC.

(1) A person handles stolen goods if (otherwise than in the course of the stealing) knowing or believing them to be stolen goods he dishonestly receives the goods, or dishonestly undertakes or assists in their retention, removal, disposal or realization by or for the benefit of another person, or if he arranges to do so.

(2) Any person who handles stolen goods shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for 14 years.

Chapter: 226  Title: **JUVENILE
OFFENDERS
ORDINANCE** Gazette
Number:
Section: 3C Heading: **Assignment of certain
matters to juvenile
courts** Version Date: 30/06/1997

(1) Subject as hereinafter provided, no charge against a child or young person shall be heard by a court of summary jurisdiction which is not a juvenile court.

(2) Notwithstanding subsection (1)-

(a) a charge made jointly against a child or young person and a person who has attained the age of 16 years shall be heard by a court of summary jurisdiction other than a juvenile court;

(aa) a court of summary jurisdiction other than a juvenile court may hear a charge against a child or young person if he is charged-

(i) with aiding, abetting, causing, procuring, allowing or permitting an offence with which a person who has attained the age of 16 years is charged at the same time; or

(ii) with an offence arising out of circumstances which are the same as or connected with those giving rise to an offence with which a person who has attained the age of 16 years is charged at the same time; (Added 13 of 1995 s. 48)

(b) where a child or young person is charged with an offence, the charge may be heard by a court of summary jurisdiction which is not a juvenile court if a person who has attained the age of 16 years is charged at the same time with aiding, abetting, causing, procuring, allowing or permitting that offence; and

(c) where, in the course of any proceedings before any court of summary jurisdiction other than a juvenile court, it appears that the person to whom the proceedings relate is a child or young person, nothing in this subsection shall be construed as preventing the court, if it thinks fit so to do, from proceeding with the hearing and determination of those proceedings.

(3) No direction, whether contained in this or any other Ordinance, that a charge shall be brought before a juvenile court shall be construed as restricting the powers of any judge, District Judge or magistrate to entertain an application for bail or for a remand, and to hear such evidence as may be necessary for that purpose.

Chapter: 226  Title: **JUVENILE
OFFENDERS
ORDINANCE** Gazette
Number:
Section: 3F Heading: **Power of other courts
to remit juvenile
offenders to juvenile
courts** Version Date: 30/06/1997

(1) If a child or young person is found guilty of an offence other than homicide by any court other than a juvenile court, the court shall, unless satisfied that it would be undesirable to do so, remit the case to a juvenile court; and where any such case is so remitted the offender shall be brought before the juvenile court accordingly, and that court may deal with him in any way in which it might have dealt with him if he had been tried and found guilty by that court.

(2) Where any case is so remitted-

- (a) the offender shall have the same right of appeal against any order of the juvenile court to which the case is remitted as if he had been found guilty by that court, but shall have no right of appeal against the order of remission; and
- (b) any appeal against the finding of guilt shall be made in accordance with the provisions for appeal against the finding of the remitting court and the time within which such appeal shall be made shall run from the date of the final order of the juvenile court to which the case was remitted.

(3) A court by which an order remitting a case to a juvenile court is made under this section may give such directions as appear to be necessary for the custody of the offender or for his release on bail until he can be brought before the juvenile court, and shall cause to be transmitted to the juvenile court a certificate setting out the nature of the offence and stating that the offender has been found guilty thereof, and that the case has been remitted for the purpose of being dealt with under this section.