

## PCLL CONVERSION EXAMINATION JANUARY 2017

Title of Paper : Criminal Procedure  
Date : 5 January 2017  
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 2017

## Criminal Procedure

### **PART A (30 marks)**

#### **Long Fact Pattern**

#### **Question 1**

Your client is a 25 year old woman named Lai Oi Yan. She has been charged with unlawfully trafficking a dangerous drug, namely 1.46 kg of ketamine, contrary to section 4(1)(a) and (3) of the Dangerous Drugs Ordinance, Cap 134. A copy of the offence section is attached to this paper.

The prosecution case is that at around 6pm on 20 August 2016, four police officers on patrol at Tai Wai Town Centre observed your client carrying a black carry bag. She entered into a dessert shop on Chik Sun Street and placed the bag on a chair. Two of the officers entered the shop and observed that your client was sitting at a communal table with other customers. The other officers then entered the shop and one of them PC 1234, identified himself to your client as a police officer, showing her his warrant card. He asked her to produce her ID card. After checking the card, PC 1234 asked your client what was in the black bag. Your client answered that it was dangerous drugs. PC 1234 then asked your client why she was carrying dangerous drugs. She said that she was delivering it for a reward of \$1500. She said that she needed the money to help pay her child's kindergarten fees. PC 1234 then asked her if she had carried dangerous drugs for a reward before. She said she had done it a few times as she needed the money.

PC 1234 then cautioned your client and arrested her. The black bag was seized and was found to contain several plastic bags containing ketamine.

#### **Question 1.1**

**Comment on the actions of PC 1234. Has he followed proper police procedures?**

**(8 marks)**

Your client disagrees with the police version of events at the dessert shop. She has told you she did not admit to carrying the drugs. She has instructed you that she told PC 1234 the bag was not hers and she did not know what was in it. It was already on the chair when she entered the shop. The officer then told her that CCTV footage of the street would show she had carried the black bag into the restaurant so there was no use in her denying it. Later, at the police station, PC 1234 asked her to sign a post recorded statement admitting that the drugs were hers. She signed only because the officer told her that after she signed he would give her bail.

#### **Question 1.2**

**Can you challenge the admissions your client made in the post recorded statement? What procedure would the court use to assess such a challenge and what is the test of admissibility?**

**(8 marks)**

Your client is very worried about being convicted of this offence. She has asked you where her case will be tried and what her likely sentence will be.

**Question 1.3**

**Advise your client of the likely venue for trial and what application the prosecution is likely to make to the court concerning the venue. Identify, in your answer, the sentence your client should expect from the court if she is convicted. (7 marks)**

The case has now been heard and your client was convicted. She received a sentence substantially above the usual tariff for this offence.

**Question 1.4**

**Can she appeal against her sentence? To which court would she make an appeal and what time limits and procedures would she need to comply with? Identify the powers of the court on hearing the appeal. (7 marks)**

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**PART B (20 marks)**

**Short Answer Questions**

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

**Question 2**

**What statutory powers can the court invoke to assist a 12 year old child witness, in a violent assault case, who has told the police he is afraid to give evidence at court? (7 marks)**

**Question 3**

**What are the practical differences between detention centre and training centre orders? (6 marks)**

**Question 4**

**What power does the Court of Appeal have to deter appellants from pursuing grounds of appeal that are not reasonably arguable? (7 marks)**

134 Title: **DANGEROUS DRUGS  
ORDINANCE**

Section: 4 Heading: **Trafficking in  
dangerous drug** Version 30/06/1997  
Date:

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(1) Save under and in accordance with this Ordinance or a licence granted by the Director hereunder, no person shall, on his own behalf or on behalf of any other person, whether or not such other person is in Hong Kong-

- (a) traffic in a dangerous drug;
- (b) offer to traffic in a dangerous drug or in a substance he believes to be a dangerous drug; or
- (c) do or offer to do an act preparatory to or for the purpose of trafficking in a dangerous drug or in a substance he believes to be a dangerous drug. (Amended 37 of 1980 s. 2)

(2) Subsection (1) shall apply whether or not the dangerous drug is in Hong Kong or is to be imported into Hong Kong or is ascertained, appropriated or in existence.

(3) Any person who contravenes any of the provisions of subsection (1) shall be guilty of an offence and shall be liable-

- (a) on conviction on indictment, to a fine of \$5000000 and to imprisonment for life; and
- (b) on summary conviction, to a fine of \$500000 and to imprisonment for 3 years. (Amended 43 of 1974 s. 2)

(4) This section does not apply to-

- (a) a preparation specified in Part II of the First Schedule; or
- (b) a dangerous drug which is in transit and-
  - (i) is in course of transit from a country from which it may lawfully be exported to another country into which it may lawfully be imported; and
  - (ii) was exported from a country which is a party to the Conventions and is accompanied by a valid export authorization or diversion certificate, as the case may be. (Replaced 7 of 1984 s. 2)

**~ End of Examination Paper ~**