

PCLL CONVERSION EXAMINATION JANUARY 2019

Title of Paper : Criminal Procedure
Date : 4 January 2019
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 six sub-sections. The question contains no element of choice. Candidates should attempt all six sub-sections in the order in which they appear on the paper. Part A is worth 25 marks.
9. Part B contains four short questions. This part also contains no element of choice. Candidates must answer ALL four questions. Part B is worth 25 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 2019

Criminal Procedure

PART A (25 marks)

Long Fact Pattern

Question 1

Freddie, a university student, attends a music festival along the Victoria Harbour waterfront one summer afternoon. He is wearing a black rucksack. The event is spread across a wide area with a fence surrounding it. There are two band stages where crowds of people gather to listen to local music groups. Whilst drunkenly walking to one of the stages to see his favourite rock group, Freddie notices a man of dark-skinned appearance near the fence being questioned by two police officers, PC33 and PC81. The two officers are carrying out a random ID check on the man.

Freddie, who has formed the view that police unfairly target foreigners, decides to see if he can help the man. Freddie challenges the two officers, shouting: *“I’m a law student and I know this man has rights! What authority do you have to search this man?”* Both police turn towards Freddie and tell him to stop interfering and remain where he is. Freddie ignores their instruction and approaches the two police officers, putting his hand on the shoulder of PC81. Freddie exclaims: *“It’s my public duty to hold you to account”*. At this point, officer PC81 restrains Freddie by forcing his arms behind his back and placing handcuffs on him.

In some pain, caused by the handcuffs, Freddie screams: *“Why are you arresting me?”* Officer PC33 replies: *“Don’t act stupid with us. You know exactly what you have done.”* The officers put Freddie in the back of a police vehicle. As he is pushed inside the vehicle, PC81 says: *“Clearly your law school didn’t teach you that it is an offence to assault an officer in the execution of his duty?!”*

Inside the vehicle, Freddie is searched by PC33 whereupon a large number of packets containing an unknown white powder (weighing, in total, approximately a half kilo) are found inside his bag. The officer asks what the packages are and Freddie, who hopes cooperation with the police will work to his advantage, explains that he thinks they contain cocaine. Freddie is then told he is also being arrested for “suspected trafficking in a dangerous drug” and is subsequently taken to Wan Chai police station.

Question 1.1

Is there anything else that PC33 or PC81 should have done or said to Freddie? If so, what should have been said and when should this have been done? (6 marks)

Question 1.2

On arrival at the police station, what procedures are the police required to do before interviewing Freddie? What do you think is the rationale behind this requirement? (4 marks)

After Freddie is handed over to officers from the Criminal Investigation Department for further investigation, DPC007 is assigned to interview Freddie under caution. The interview is about to begin when Miss Chow, a solicitor who has been instructed by Freddie's uncle, arrives at the station requesting a private meeting with Freddie.

Question 1.3

Under what circumstances can the police refuse permission for Freddie's solicitor to consult privately with him? Please give authorities for your answer. (3 marks)

Question 1.4

DPC007 believes that if a private meeting between Miss Chow and Freddie goes ahead, she may well advise Freddie not to answer any questions the police may put to him. Would this be a valid reason for refusing access to her client under the Rules and Directions for the Questioning of Suspects and Taking of Statements? (3 marks)

The police allow Miss Chow to interview Freddie privately. Miss Chow then leaves the police station. A short time later, DPC007 interviews Freddie under caution for Assaulting an Officer in execution of duty, contrary to s.63 of the Police Force Ordinance Cap 232 (see annex 1) and Trafficking in a dangerous drug, contrary to s.4 of the Dangerous Drugs Ordinance Cap 134. Freddie gives a "no comment" interview.

Question 1.5

The matter eventually comes before the Magistrates Court. The Prosecution intends to apply to have the defendant (Freddie) committed for trial on both charges. When would the application for committal be made? In your view, would Freddie be likely to be committed on both charges? (6 marks)

Question 1.6

If Freddie secures bail before his trial but fails to attend the first day of his trial, what would the likely consequences be for him? (3 marks)

PART B (25 marks)

Short Answer Questions

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

Question 2

Sally was Christmas shopping at a luxury mall in Causeway Bay one Winter evening. As she was heading home, a male came from behind, pushed his hand into her face, and then stole her shopping bags from her, before running away into the crowds. Sally who is short sighted, temporarily had her glasses knocked from her face in the attack, but was able to see that the man had a small scar above his left eyebrow. In shock, Sally returned to the shopping mall and found a café where she sat for over an hour to calm her nerves before

deciding to call the police. The police subsequently arrested Alan Yim (who has large scars above both left and right eyebrows) on suspicion of being the robber and held an ID parade in which he participated.

Assuming Mr. Yim is identified by Sally in the identification parade, at Mr Yim's trial, what matters should the magistrate consider when evaluating the identification evidence? Give an authority for your answer. If the magistrate convicts Mr Yim after trial, to what extent, if any, does the magistrate need to mention the authority in his written Reasons for Verdict? (8 marks)

Question 3

What are the grounds upon which the Secretary for Justice may apply to the Court of Appeal for a review of a sentence (other than one fixed by law)? Can such a review arise following an acquittal? What are the consequences for the acquittal if the review succeeds? (7 marks)

Question 4

What is an antecedent statement? In what court(s) would it be referred to, and at what stage of proceedings? (6 marks)

Question 5

Under what circumstances would a judge/magistrate decide to hold a Newton Hearing? (4 marks)

Annex 1

CAP 232 POLICE FORCE ORDINANCE Section 63 Penalty on person assaulting, etc. police officer in execution of duty, or misleading officer by false information

Any person who assaults or resists any police officer acting in the execution of his duty, or aids or incites any person so to assault or resists, or refuses to assist any such officer in the execution of his duty when called upon to do so, or who, by the giving of false information with intent to defeat or delay the ends of justice, wilfully misleads or attempts to mislead any such officer, shall be liable on summary conviction to a fine of \$5,000 and to imprisonment for 6 months. (Amended 42 of 1977 s. 16)

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