

PCLL CONVERSION EXAMINATION JUNE 2015

Title of Paper : Criminal Procedure
Date : 25 June 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 June 2015

Criminal Procedure

PART A (30 marks)

Long Fact Pattern

Question 1

Your client, Bradley Ho, aged 20 years of age, has been charged with one count of trafficking in a dangerous drug (namely 35 grammes of powder containing 28 grammes of ketamine) contrary to section 4 (1) (a) and (3) of the Dangerous Drugs Ordinance, Cap 134. **A copy of the section is attached to this paper.**

The police case is that at about 7:48pm on 21 March 2015, PW1 and PW2 (both police officers) were on duty in plain clothes making observation outside the Wa Wong Shipping Centre at 11 Des Voeux Rd in Central. They observed Ho walking towards them at a hurried pace from the direction of the Sincere Department Store. He was looking around and pressing his hand against his left trouser pocket. When he was about 2 metres away from where PW1 and PW2 were standing, Ho appeared to notice they were watching him. He turned away and began to re-trace his steps. PW1 and PW2 immediately followed Ho and stopped him. They revealed their police identities and PW1 asked to see Ho's identification documents. Ho produced his Hong Kong Identity Card. PW2 then said he suspected Ho to be in possession of dangerous drugs and that he intended to search him. PW2 began to search Ho's pockets and in his left trouser pocket PW2 found 3 transparent re-sealable bags containing suspected dangerous drugs. PW1 then arrested Ho for suspected trafficking in dangerous drugs and cautioned him. Ho immediately said: "Ah Sir, give me a chance. It was all for my own use, not for others". PW1 recorded this admission in his police notebook and Ho signed on it.

Ho was then transported to the nearest police station. At the police station, he was asked if he wanted to seek the assistance of a lawyer but he declined the offer. He was then cautioned again for suspected trafficking in dangerous drugs and questioned by PW1 in a video recorded interview. During the interview Ho was asked where he got the drugs. He said he had bought them from a dealer a short time before the police intercepted him. He said he was on his way to a party to share them with some friends. At the end of the video recorded interview Ho was charged with trafficking in dangerous drugs. He was denied police bail. At the end of the interview Ho signed a statement which stated he had no complaint about the way he was treated during the police investigation.

Question 1.1

You have just taken on Ho as a client. He will make his first appearance before the magistrate's court tomorrow. Ho does not want bail and has instructed you not to seek it. Advise him what will happen at court tomorrow and where his case is likely to be tried. (8 marks)

Ho has instructed you that he was carrying the ketamine entirely for his own use. On his instructions you have asked the prosecution if they will accept a plea to possession of the 28 grammes of ketamine but they have declined.

Ho has told you that when he arrived at the police station he told the police he did not want to consult with a lawyer but asked to telephone his mother. He claims that he was feeling unwell during the drive back to the police station as he was motion sick and that he asked the duty officer to call his mother to bring him his motion sickness tablets. He has told you that because he was not allowed to call his mother, he was dizzy during the interview and that he only said he was taking the drugs to a party to stop PW1 asking him questions. After the interview had concluded, the police provide him with some medication as a police doctor confirmed Ho was suffering from mild nausea.

Question 1.2

Can you and should you challenge Ho's two admissions? What procedure would be used to assess such a challenge? (9 marks)

Question 1.3

Ho has asked you what will happen if he is convicted of trafficking in 28 grammes of ketamine. You are aware he has two prior convictions for possession of ketamine. He was ordered by a magistrate to be detained in a Drug Addiction Treatment Centre for both offences. Ho would like to return to DATC and be treated for his addiction again. If he is convicted, is this a likely outcome? (5 marks)

Question 1.4

Ho has been convicted and sentenced. He wants to appeal against both orders. Identify the court to which any appeal would be made and the time limits and procedures that must be satisfied for an appeal. Ho is particularly interested in whether an appeal court can find him guilty of possession of dangerous drugs, instead of trafficking. He wants to call a witness on appeal who will say that Ho never shared his ketamine with anyone. Advise Ho whether this is possible. (8 marks)

PART B (20 marks)

Short Answer Questions

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

Question 2

When and why would a no case to answer application be made? What is the result of a successful application? (6 marks)


Question 3

Compare and contrast the special powers the court has to deal with children who are the victims of crime in sexual and physical abuse cases. (8 marks)

Question 4

What kind of orders can be made to compensate a victim of crime? (6 marks)

~ End of Examination Paper ~

Chapter: 134  Title: **DANGEROUS DRUGS** Gazette
ORDINANCE Number:
Section: 4 Heading: **Trafficking in** Version Date: 30/06/1997
dangerous drug

(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)