

PCLL CONVERSION EXAMINATION JUNE 2016

Title of Paper : Criminal Procedure
Date : 27 June 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 5 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 2016

Criminal Procedure

PART A (30 marks)

Long Fact Pattern

Question 1

One afternoon, while patrolling along Shanghai Street, Yau Ma Tei on foot, PC34 and WPC60 (two uniformed police officers) notice a female in her early twenties ('Janet'). She is standing in the doorway of an old building on the opposite side of the street. They observe another older male with tattoos approach Janet. The man exchanges words with Janet and is seen handing some banknotes to her. Janet then looks around hesitantly before handing the man a small object. The man hurries away. As this is an area that is known for having higher than average levels of criminal activity, PC34 and WPC60 suspect that Janet may be selling dangerous drugs. They cross the street and approach her. PC34 demands Janet's identity card. After inspecting it he asks Janet what she was doing with the man who had approached her. Janet says nothing in reply. PC34 then searches Janet and finds a small bag containing a large number of smaller transparent plastic bags. In each of the small bags is a white powder that looks like cocaine. WPC60 asks Janet what the powder is. Janet does not answer. PC34 further asks Janet whether she has any more white powder in her possession. She replies: "I have more at my place". PC34 asks her where she lives. Janet provides him with an address in Jordan. PC34 then declares the arrest of Janet for trafficking in dangerous drugs.

Question 1.1 (8 marks)

On what basis can PC34 arrest Janet? Would an arrest be justified here?

Question 1.2 (8 marks)

When arresting Janet, what, if anything, is PC34 required to tell her?

Janet is subsequently taken to Yau Ma Tei police station. She is searched once more and then handed over to officers from the Criminal Investigation Department for further investigation. Janet is eventually charged with trafficking in a dangerous drug (cocaine) contrary to s.4 of the Dangerous Drugs Ordinance (Cap. 134) (**NB: a copy of this provision is provided**). In light of the large quantities of cocaine found in Janet's apartment she is to be tried before the Court of First Instance (CFI). At the magistrates' court, she is denied bail following her first appearance. At her next appearance Janet will have an opportunity to elect to have a preliminary inquiry.

Question 1.3 (8 marks – answer ALL parts)

- (i) What is the purpose of a preliminary enquiry?
- (ii) What possible advantages and disadvantages are there in electing to have a preliminary inquiry?
- (iii) If Janet elects to have a preliminary inquiry and the magistrate who hears the inquiry rules that there is insufficient evidence to commit Janet for trial, does this amount to an acquittal?
- (iv) If Janet does not elect for a preliminary inquiry but believes that the prosecutions papers that have been served on her do not disclose a prima facie case against her, what action, if any, can she take before her trial begins?

Janet is committed for trial in the CFI and eventually convicted by unanimous verdict. She is to be sentenced as a first time offender, on a date to be fixed. While awaiting sentence she overhears a solicitor with their client discussing the possibility of ‘probation’.

Question 1.4 (6 marks)

What is probation? What requirements, if any, are there before such a sentence may be imposed? In the event it is discovered that Janet suffers from an addiction to dangerous drugs, would a Drug Addiction Treatment Centre order be imposed alongside probation?

PART B (20 marks)

Short Answer Questions

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

Question 2 (8 marks)

You have been handed a brief instructing you to attend the Kwun Tong magistrates’ court to make a bail application on behalf of Aroop Roy. Mr Roy has been charged with shoplifting food from a store near to his flat where he regularly goes to make purchases. Mr Roy is a foreign national from Bihar, India but has lived in Hong Kong for four years having come here to find a better life. He has no children of his own and currently lives in a shared house in Kowloon City. When asked about his marital status, he replies, “I have a local girlfriend. She can’t be here today because she is working as a cleaner.” Mr Roy is unemployed and supported by his girlfriend. He has been helping out with the care of her six year old son who has medical problems. Mr Roy has no previous convictions but has been stopped several times in the past by police checking ID cards.

On what basis can bail be granted by a magistrate in these circumstances? Identify the relevant provisions and likely objection(s) to bail that the Prosecution might raise and explain how you would respond to them.

Question 3 (6 marks)

During a police investigation, officers interviewed a potential prosecution witness 'X' and took a written statement from him. The statement contained hearsay evidence to the effect that the defendant 'D' did not commit the crime for which he will go on trial. The prosecution decides not to call X as a prosecution witness at D's trial.

Is the prosecution under any duty to disclose this statement made by X to the defence?

Question 4 (6 marks)

Explain the procedure when a submission of No Case to Answer is made and on what basis. Cite any relevant case law in support of your answer.

~ End of Examination Paper ~

(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)