

## PCLL CONVERSION EXAMINATION JUNE 2017

Title of Paper : Criminal Procedure  
Date : 23 June 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 June 2017

## Criminal Procedure

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

#### **Long Fact Pattern**

#### **Question 1**

Your client, Tim Mo has been charged with one count of common assault, contrary to section 40 of the Offences Against the Person Ordinance, Cap 212, LHK. The offence carries a maximum penalty of one year's imprisonment.

The prosecution case is that on 3 January 2017, Mo threw eggs at a group of people walking towards a prize giving podium at the Shatin Racecourse. The victim of the assault, Jenny Li (PW1) was a Jockey Club hostess leading a group of VIPs to the podium for a prize giving ceremony when she was hit by an egg on her right cheek.

PW1 was responsible for leading the VIP party out of a VIP room and walking them to the podium just as the last race of the day finished. There were security personnel around the party of VIPs. The path PW1 took led the group past a public audience enclosure on their right.

In her statement, PW1 claimed that just as she was about to walk onto the podium she felt a golf-ball-like object strike her right cheek. It was very painful and drew tears but she continued with her job and the presentation ceremony proceeded without interruption. She did not see where the object came from but knew it came from her right and from the direction of that nearest public enclosure. When PW1 led the VIP party off the podium, to return to the VIP room after the prize giving she saw an intact egg on the grass very near to the spot where she had been struck earlier. Her right cheek was swollen and red.

PW2 and PW3 were both security officers of the Jockey Club and were on duty inside the public enclosure with about 300 people watching the VIPs approach the podium for the prize giving. PW2 told police he noticed your client -who was about 15 metres from him -raise his arm and throw something brownish and round like an egg towards the VIPs as they walked to the podium. He pushed through the crowd towards your client shouting at him at the same time. Before he could get to him, your client had taken something out of his rucksack and thrown something again in the same direction. PW2 described your client as wearing a white T-shirt and blue jeans, and being of average build with short black hair. He said your client was carrying a rucksack.

PW3 told police he saw PW2 shouting "stop throwing things" and looked in his direction. He saw PW2 pushing through the crowd towards the back of the enclosure. PW3 followed him through the crowd to your client. PW3 asked your client what he was doing. He refused to answer any questions. After hearing PW1 had been injured, PW2 and PW3 immediately handed your client over to a police officer, PW4.

On hearing of the complaint, PW4 took your client to a security room of the club and searched him. He found in his rucksack 20 intact eggs and some broken eggs. He arrested your client for common assault and cautioned him. Your client said, under caution, that the eggs were for throwing at people but he did not have a specific target.

PW4 then made a post-record of your client's admission in his notebook but your client refused to sign it.

Around and on the VIP podium, police found three intact eggs and several broken eggs. Inside the public enclosure were also found broken eggs. A sketch was made of where broken eggs were found (Exhibit P1). A series of photos (Exhibit P2) was also taken by a police officer showing the layout of the public enclosure, the track and the podium, as well as where the broken eggs and egg stains were found.

### **Question 1.1**

**Your client has told you he did not make the alleged admission to PW4. He has told you that although he had eggs with him at the racecourse he did not throw any that day. He claims other people were also present at the racecourse with eggs and he saw them throwing their eggs around. You are satisfied that your client was cautioned properly and he does not claim any police misconduct or unfairness towards him. Is it necessary for the court to hold a voir dire/alternative procedure if your client maintains his instructions, at trial, that he did not make the alleged admission to PW4? (5 marks)**

### **Question 1.2**

**Your client wishes to know in which court his case is likely to be tried. Identify the likely trial court and further, any court(s) to which you could appeal, assuming your client is convicted at his trial. (5 marks)**

### **Question 1.3**

**The prosecutor has asked for your consent to include Exhibits P1 and P2 in the Admitted Facts for trial. What advice would you give your client in relation to this request? What are the probable consequences for allowing/denying the request? (10 marks)**

### **Question 1.4**

**No ID parade, confrontation or group identification of your client was held in relation to the case. At trial, PW2 identified your client in the dock as the man he saw throwing round objects at the VIPs. Can you challenge his identification? On what basis? Give authorities for your answer. (10 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 is the chain of evidence, what types of evidence does it relate to and how can it be used to shorten proceedings at trial? (7 marks)**

**Question 3**

**In what circumstances can a defendant's first conviction become spent for the purposes of his criminal record? (6 marks)**

**Question 4**

**What is a *nolle prosequi* and what is its effect on a trial when filed by the Secretary for Justice in the District Court and the Court of First Instance? (7 marks)**

**~ End of Examination Paper ~**