

PCLL Conversion Examination
7th January 2010
Examiner's Comments
Criminal Procedure

Introduction

Overall, the standard of the papers was somewhat disappointing. There were several failures and most students just managed to scrape through.

Part A

Question One

For the most part this question was poorly answered. Many students did not appreciate that, by reference to the schedules in the Magistrates Ordinance, any of the three courts of first instance had the jurisdiction to hear the case. The correct venue was the Court of First Instance, but the majority of students, even those who were aware of *Mo Kwong-sang*¹, chose the District Court or preferred to 'sit on the fence' and failed or omitted to select a probable court of venue at all; in other words they did not answer the second part of the question. Students who were aware of *Mo* seemed to have read only the first principle.² The other principles, which dealt with aggravating factors, such as invasion of private premises, harm to the victim and multiplicity of offences, all of which were of some relevance to this question, tended to be ignored or overlooked.

Question Two

Most students tended to appreciate that this question related to the voluntariness of the statement under caution, that there were two issues to be addressed [the inducement and the use made of the co-defendant's admissions under caution], and it was necessary to refer to the Secretary for Security's Rules and Directions.

Some students, however, seemed to think that this question related to the circumstances in which a plea of guilty could be withdrawn.

¹ *Mo Kwong-sang v. R* [1981] HKLR 610

² "... where the accused was carrying a knife or other dangerous weapon which he displayed to his victim should normally be five years".

Question Three

Despite the fact that this question related to a sentence appeal, several students decided to answer it on the basis that it related to a conviction appeal. The majority of students failed to appreciate that Joe Sun was entitled to a 1/3 reduction in his sentence, from the normal sentence that would be imposed after trial, because of his early plea, and that his position should be distinguished from that of Kevin Chan, because the sentence of 8 years imposed on Kevin, after trial, was a proper sentence.

Question Four

Those students who erroneously identified the Magistrates Court as the probably court of trial, continued the error by specifying the Court of First Instance in its appellate jurisdiction as the appropriate court of appeal. Those who correctly identified the appellate court as the Court of Appeal, usually managed to deal with the procedure and the time limit for appeal. Some still wanted to discuss appeals against conviction.

Part B

Question One

For the most part the students had obviously read their material, and were able to properly answer this question, although a couple of students decided that this question related to identification parades, rather than [dock] identification in court.

Question Two

For the most part, this question was well answered, by reference to direction 8(b) of the Secretary for Security's rules and directions.

Question Three

Again, by reference to section 83V of the Criminal Procedure Ordinance, most students were able to identify the circumstances in which the appellate court was obliged to receive new evidence at the hearing of an appeal.