

PCLL Conversion Examination
June 2010
Examiner's Comments
Criminal Procedure

Question 1.1

This question required students to understand the difficult provisions in the Magistrates Ordinance, relating to jurisdiction, together with the two schedules. As I have previously commented, the jurisdictional provisions of the Magistrates Ordinance constitute one of the worst pieces of legislative drafting one will come across, because of use of double negatives.

For this question also, students needed to have knowledge of the tariff cases for burglary and the principle of totality. There is also a tariff case for the overstaying offence as well, which most students did not seem to appreciate, and it is unusual, because it specifies a period of imprisonment on a plea of guilty, when most tariff cases refer to the appropriate starting point sentence after trial.

The majority of students appreciated that the immigration offence could be transferred to the District Court if the burglary offences were also to be dealt with there, but could not be transferred to the Court of First Instance. [It is about time that the Magistrates Ordinance was suitably amended to facilitate the transfer of summary offences with indictable offences that are to be tried in the Court of First Instance. Time and time again the Court of Appeal has said that a defendant is entitled to have all outstanding matters dealt with at the same time, but because of the curious position that summary offences can never be dealt with in the Court of First Instance, it is not always possible to do so.

One of the more common errors [because of a lack of appreciation of totality] was to multiply the 5 burglary offences by the maximum sentence [14 years] and thus conclude that only the Court of First Instance had jurisdiction.

Question 1.2

Most students recognized that this question related to Newton Inquires, and were able to outline the procedure properly.

Question 1.3

In answering this question students often managed to provide the answer to the next questions, thus repeated themselves.

Students that did answer this question appropriately, were able to refer again to the tariff cases concerning burglary offences, the issue of totality, the 1/3 discount for a plea of guilty, that multiple offences was an aggravating factor, and that the sentence after plea of guilty for the immigration offence was usually 15 months.

Question 1.4

Whilst the question clearly mentioned an appeal against sentence, several students discussed conviction appeals. Generally, though, this question was well answered.

Part A generally.

One assumes that students have access to past examination papers, and should, therefore, appreciate that the first question will always concern jurisdiction. Accordingly, it is difficult to understand why so many students seem to be ill prepared for this part of the paper. Those that scraped through usually did so because they answer part B well.

Part B

Question 2

Most students answered this question correctly, although some forgot to mention excepted offences, which, I gather, was the main point of the question.

Question 3

The question here is quite simple, and obviously required a discussion of section 54 of Cap. 221. For reasons that are difficult to fathom, several students referred to voir dire proceedings.

Question 4

Again, this question was well answered overall.

Conclusion

From the papers that I marked, a better effort than last time which is encouraging.