

**PCLL Conversion Examination
June 2011
Examiner's Comments
Criminal Procedure**

Introduction

The standard of the papers this time has reverted to those of previous examinations i.e. the standard was generally very poor, with a high failure rate.

Part A

Question 1.1

This question, as usual, addressed the issue of jurisdiction. It required a consideration of the problem from two perspectives. Firstly, a consideration of which courts were vested with jurisdiction by reference to the jurisdictional sections of the Magistrates Ordinance, Cap. 227 i.e. sections 88, 91 and 92, and to the 2nd schedule, to the ordinance, to deal with a charge of criminal damage; secondly, there was a need to consider the likely sentence that would be imposed following conviction after trial on these two young offenders, having regard to the fact that there is no tariff for the offence. As a sentence of less than 2 years imprisonment was likely, the correct venue was the Magistrates Court.

The majority of students gave incorrect answers to this question, suggesting District Court or even Court of First Instance was the venue. A lack of knowledge of the jurisdictional provisions meant that a number of students assumed because the maximum sentence for the offence was 10 years that the case had to be committed for trial to the Court of First Instance.

Even though Joe was already 16, some students suggested he could be tried in the Juvenile Court. This was incorrect, not only because he was too old, but where a juvenile and a non-juvenile defendant are charged together, it is usual for the case to be dealt with in the 'adult' court even though one of them is a juvenile.

Question 1.2

The majority of students received some marks for the answer to this question. Those that did not do well had not taken on board the facts. Both defendants had been released on police bail to appear at the Magistrates' Court. The elder brother did not appear and thus had to be rearrested. Some students still suggested that the police could entertain a bail application. The simple answer was that he could apply for bail when he first appeared at the Magistrates Court. The chances of success were not great in view of his failure to appear on an earlier occasion.

Question 1.3

There were some reasonable answers to this question, although some students suggested terms of imprisonment in years [one said 4-5 years!]. This question required an appreciation that rehabilitation is an important factor when a young defendant is being sentenced, and although one of the later questions specifically related to section 109A of the Criminal Procedure Ordinance, that section was also relevant here.

A number of different types of sentencing options were available including CSO, Rehabilitation Centre Order, but the likely sentence was either detention centre or training centre. Probation Order was probable not viable. A number of students mentioned compensation order, and that was also a possibility, combined with one of the other sentencing options I have mentioned.

Question 1.4

As the venue of trial was the Magistrates Court the venue for the appeal was the Court of First Instance [S.113, Cap. 227], and the period within which the appeal must be lodged was 14 days.

Those that got the venue wrong, usually provided the incorrect answer for the appellate court, although some students "sat on the fence" and indicated if the trial was heard in the District Court or Court of First Instance then the appeal would be to the Court of Appeal, but if it was heard in the Magistrates Court, the appeal would be to the Court of First Instance. Despite taking this position, students were given some marks for such an answer.

Part B

Question Two.

Most students received marks for their answers to this question. Some, however, overlooked what was an important reason for admitting facts, namely, to save time and expense by shortening proceedings.

Question Three

The majority of students were aware of the judgment of Mr. Justice Patrick Chan CJHC [as he then was] in *Chan Kwok-wah* [1998], concerning the need for special circumstances, before prosecution costs should be awarded. Reasonably well answered overall.

Question Four

Another question that was reasonably well answered. The important aspects of section 109A are that it applies to defendants between the ages of 16 and 21, but only if they are not charged with an “excepted offence” as listed in the schedule, and the sentencing court should call for reports before sentencing a defendant who fits the criteria, and the court should consider a sentence other than imprisonment, based on the principle that young offenders should, wherever possible, be rehabilitated.

Conclusion

It is obvious that a number of students sit these examinations with little or no preparation. The material that they need to know to pass the examination is, as I understand, available to everyone, and besides that, to get a feel for the examinations, the prudent student should be looking at past examination papers; that is just common sense.