

PCLL CONVERSION EXAMINATION, JANUARY 2010

Title of Paper : Criminal Procedure
Date : 7 January 2010
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 3 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 January 2010

Criminal Procedure

PART A (30 marks)

Long Fact Pattern

Question One

Your clients, Joe Sun and Kevin Chan, have been charged with robbing three taxi drivers over the past 6 months. Robbery is an offence against s10 of the Theft Ordinance, Cap 210, carrying a maximum penalty of life imprisonment. All three robberies took place in the Cross Harbour Tunnel. The police allege that your clients hailed the taxis in the New Territories and asked to go to Central. Mid way through each journey they would pull out knives and demand cash. They successfully robbed the driver of cash of \$520 on the first occasion, and \$1500 on the second occasion. On the third occasion, the taxi driver refused to give them cash and fought back. Chan and Sun struggled with the driver and cut him with the knife but the driver would not give up so they got out of the taxi and ran off through the tunnel. The taxi driver gave chase and managed to catch up to Sun and, with the help of tunnel staff, held him down until police arrived.

Sun was arrested for armed robbery and interviewed under caution. He made a statement in which he admitted his part in the robberies and also implicated, as his accomplice, Chan. Chan was then arrested and also interviewed under caution. During his interview, Chan relied on his right to silence until he was shown the statement made by Sun and told by the interviewing officer that things would go better for him at court if he co-operated with the police investigation. Chan then admitted his part in the robberies.

Sub-section One

Chan and Sun are due to make their first appearances before the magistrate next week. Advise them what is likely to happen at court and where their case will probably be tried. (8 marks)

Sub-section Two

Sun has told you he will plead guilty but Chan wants to plead not guilty and has asked if there is any way he can withdraw his admission to the police. What advice would you give Chan? (8 marks)

Sun pleaded guilty to armed robbery and was held over for sentencing by Judge Yip until Chan's trial had been dealt with. After trial, Chan was also convicted of armed robbery. Both men were sentenced by Judge Yip to 8 years imprisonment. Evidence provided to the court showed that the taxi driver who fought back received a cut to his arm which required 11 stitches. Your clients are both aged 20 and have very similar previous convictions for drug offences. They are drug addicts who met in a drug addiction treatment centre a year ago where they were both serving sentences for possession of ketamine.

Sub-section Three

Would you advise your clients to appeal against their sentences? (8 marks)

Sub-section Four

Identify the court in which any appeal against sentence would be heard, any procedures which must be complied with in order to have that court hear the appeal, and the power of that court in determining the appeal. (6 marks)

PART B (20 marks)

Short Answer Questions

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

Question One

When might a dock identification be permitted at trial? (6 marks)

Question Two

Under what circumstances can an arrested person be legitimately denied access to a lawyer, by police, during an investigation? (7 marks)

Question Three

What is the test that should be met before a judge can admit fresh evidence under s118(1)(b) of the Magistrates' Ordinance? (7 marks)

~ End of Examination Paper ~