

PCLL CONVERSION EXAMINATION, JANUARY 2011

Title of Paper : Criminal Procedure
Date : 6 January 2011
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 2011

Criminal Procedure

PART A (30 marks)

Long Fact Pattern

Question 1

Your client, John Ma, has been charged with throwing corrosive fluid with intent to cause grievous bodily harm, contrary to section 29 of the Offences Against the Person Ordinance, Cap 212, and one charge of assault occasioning actual bodily harm, contrary to section 39, of the same Ordinance.

The maximum penalty for throwing corrosive liquid with intent to cause grievous bodily harm is life imprisonment and the maximum penalty for assault occasioning actual bodily harm is 3 years imprisonment.

The prosecution case is that your client threw acid on the son and daughter-in-law of his business partner to teach him a lesson. He took a bottle of sulphuric acid and waited for his partner's son to leave his workplace. When the son came out of his work place with the daughter in law, he pulled back the son's hair and poured acid onto his face and threw acid in the daughter in law's face.

Question 1.1

Your client will make his second appearance before the Magistrate's Court tomorrow. He wants to know what is likely to happen with his case. Advise him of the most likely application to the court, which will be made by the prosecution.

(8 marks)

It is now three weeks before the trial is due to commence and the Department of Justice has sent you a letter asking you to admit the evidence of intended prosecution witness, Dr Leung, under section 65B of the Criminal Procedure Ordinance. Dr Leung treated both victims, in the case, at the Princess Margaret Hospital, shortly after the attack, and then again in follow up treatments. In his statement, Dr Leung says that the son suffered very serious burns to 11% of his body (a 2% third-degree scald over his right hand and full thickness burns to both hands and knees) and 6% of his face (including a third-degree scald over around 5% of his face). He has required numerous operations, including skin grafts, and has been left with severe disfiguring facial scars and impaired eyesight. The daughter in law has suffered burns to her face, the back of her right hand and neck. Dr Leung does not say, in his statement, how the victims received their burns, but he states their injuries are consistent with burns by sulphuric acid.

Question 1.2

Should you admit Dr Leung's statement? What action, if any, would you take in regard to the Department of Justice's request?

(8 marks)

Question 1.3

The trial has been concluded and your client has been convicted. The judge has sentenced him to 12 years imprisonment for throwing corrosive liquid and two years imprisonment for assault. The sentences are to be served concurrently. Before committing this offence your client was a person of good character. Your client wants to know if he should appeal against his sentences. Advise him whether, in your opinion his sentences should be appealed. (7 marks)

Question 1.4

Assume your client has instructed you to appeal against both his conviction and sentences. Identify the court to which any appeal should be made, the statutory powers which would allow the court to hear the appeal and the powers of the court on determining the appeal. (7 marks)

PART B (20 marks)

Short Answer Questions

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

Question 2

What is the purpose of a Newton Inquiry? Where the facts are found to be equivocal, to which party should the judge give the benefit of the doubt? (6 marks)

Question 3

What is the test a court will apply when determining whether to grant bail, pending an appeal? (6 marks)

Question 4

Explain any critical differences between the ‘alternative procedure’ and the ‘voir dire’ for determining the admissibility of evidence. (8 marks)

~ End of Examination Paper ~