

PCLL CONVERSION EXAMINATION JUNE 2011

Title of Paper : Criminal Procedure
Date : 28 June 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 4 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 June 2011

Criminal Procedure

PART A (30 marks)

Long Fact Pattern

Question 1

In the early hours of January 2011 your client Jim Chan and his younger brother Joe Chan approached a light goods vehicle parked on the roadside outside New Town Plaza in Sha Tin. They walked around the vehicle then kicked the offside door twice with their legs. They also smashed three of the windows. The vehicle subsequently required repairs costing \$26,000. A police officer happened to be on duty nearby. He witnessed their actions and arrested the brothers for criminal damage, contrary to section 60(1) and punishable under section 63 of the Crimes Ordinance, Cap 200. **A copy of both sections is attached at page 4.**

You represent both the brothers. Jim is aged 18 years of age and his younger brother Joe is 16 years of age. They were taken to the nearest police station and interviewed separately. Both admitted the offence and were granted police bail to appear at the Sha Tin Magistrates Court the following week.

Question 1.1

Jim and Joe Chan 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)

The first appearance before the magistrate has now taken place and the case against Joe was adjourned by the magistrate for further mention. Jim failed to appear at court and a warrant was issued for his arrest.

Yesterday Jim was arrested after a police officer spotted him in Sha Tin. Jim is now in police custody. The prosecution have told you they will resist any application for bail.

Question 1.2

Jim wants to make an application for bail. Advise him to whom such an application would be made and the procedure for making such an application. He also wants to know the likelihood that such an application would succeed. (6 marks)

Both brothers have now pleaded not guilty. Their trial is listed for hearing next month. The brothers are concerned as to the sentences they will receive if convicted at trial. Both brothers have no previous convictions.

Question 1.3

Assuming both brothers are convicted after trial, identify the most likely type of sentence they will receive. (8 marks)

Both brothers have now been convicted and sentenced. They are unhappy with their sentences and want to appeal against them.

Question 1.4

Advise the brothers whether it is possible to appeal against their sentences. In answering this question identify the power allowing any appeal, the court to which any appeal would be made, any relevant time limits and the powers of the court on hearing any appeal. (8 marks)

PART B (20 marks)

Short Answer Questions

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

Question 2

What is the procedural purpose of a section 65C admission statement? (6 marks)

Question 3

In what circumstances would the prosecution be likely to seek costs on the conviction of a criminal defendant? Use authorities to support your answer. (8 marks)

Question 4

What is the test before s109A of the Criminal Procedure Ordinance can be applied in sentencing? (6 marks)

~ End of Examination Paper ~

Section 60 Crimes Ordinance: Destroying or Damaging Property

(1) A person who without lawful excuse destroys or damages any property belonging to another intending to destroy or damage any such property or being reckless as to whether any such property would be destroyed or damaged shall be guilty of an offence.

(2) A person who without lawful excuse destroys or damages any property, whether belonging to himself or another-

(a) intending to destroy or damage any property or being reckless as to whether any property would be destroyed or damaged; and

(b) intending by the destruction or damage to endanger the life of another or being reckless as to whether the life of another would be thereby endangered, shall be guilty of an offence.

(3) An offence committed under this section by destroying or damaging property by fire shall be charged as arson.

Section 63 Crimes Ordinance: Punishment of Offences

(1) A person guilty of arson under section 60 or of an offence under section 60(2) (whether arson or not) shall be liable on conviction upon indictment to imprisonment for life.

(2) A person guilty of any other offence under this Part shall be liable on conviction upon indictment to imprisonment for 10 years.