

PCLL CONVERSION EXAMINATION JANUARY 2018

Title of Paper : Criminal Procedure
Date : 5 January 2018
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 2018

Criminal Procedure

PART A (30 marks)

Long Fact Pattern

Question 1

Acting on information, several police officers laid ambush outside Flat 4C of Tai Wok Building, North Point (the “Premises”) and waited for their target person (“D1”) to appear. D1 was a suspect in connection with a series of rape cases. About three hours later, a male, fitting the general description of D1, was seen taking out a key to open the door of the Premises. Seeing this, two officers (“PW1” and “PW2”), rushed over to intercept him. The officers revealed their identities and demanded production of an identity card from him. The male complied. Having confirmed the male was in fact the wanted person, PW1 declared arrest of D1 for the offence of rape. Upon hearing this, D1 quickly ran inside the Premises and locked the entrance door. The officers demanded the occupants inside the Premises to open the door but to no avail. They then forcibly broke open the door where they found D1 and another 15-year old boy (“D2”) inside. The officers subdued D1 after he put up a brief struggle. PW1 declared arrest and cautioned D1. D1 remained silent. A search of the Premises was conducted and several pieces of clothing belonging to D1 were seized.

In the meantime, D2 staggered out the Premises and wandered into the staircase of the building. He was visibly dazed. PW2, suspecting that D2 was high on drugs, immediately stopped D2 and asked for inspection of his identity card. D2 mumbled something which PW2 could not understand. PW2 decided to search D2 and a small package of suspected dangerous drugs was found on D2. When D2 was questioned what it was, he replied that, “oh, it is coke”. PW2 understood “coke” as cocaine. PW2 then cautioned and arrested D2 for possession of dangerous drugs and seized the package as an exhibit.

Both defendants were taken back to the police station, PW1 told D1 that a line-up identification parade will be conducted within a couple of days.

PW2 took a Record of Interview (“RI”) from D2. PW2, believing that D2 could hardly write or read, decided to write the RI for D2. PW2 recorded what D2 said outside the Premises as, “oh, it is cocaine” on the RI. When the RI was completed, D2 refused to read it. D2 signed the RI. PW2 then served on D2 a Notice to Persons in Police Custody and allowed him police bail.

Question 1.1

Advise D1 if the police had properly exercised the power of arrest, detention, entry into the Premises and seizure of his clothing. **(10 marks)**

Question 1.2

Advise D1 of the possible consequences if he refuses to attend the line-up identification parade. **(5 marks)**

Question 1.3

What is the basis for PW2 to arrest and detain D2? Can PW2 seize the drugs from D2? If so, why? **(8 marks)**

Question 1.4

Advise D2 of the way in which the Record of Interview was obtained by the police followed correct procedure. **(7 marks)**

PART B (20 marks)

Short Answer Questions

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

Question 1

Albert, a 19-year old school student who has a clear criminal record, has pleaded guilty to a charge of theft. In mitigation, counsel for the defendant urges the court neither to put Albert into custody nor to record a conviction against Albert. Upon hearing the magistrate call for a community service order (“CSO”) report and a drug addiction treatment centre (“DATC”) report before sentencing, Albert shouts “I am not going to DATC and I am not doing any community service work, never, never”. Is it possible, under the circumstances, that Albert may be able to avoid an immediate remand into custody? Is it possible that a CSO may be imposed against Albert? Give reasons for your answer. **(8 marks)**

Question 2

Under what circumstances may

- (a) an appeal by way of case stated in District Court and **(3 marks)**
(b) a review of decision by magistrate, arise? **(3 marks)**

Question 3

Mr. Conman is convicted after trial for the offence of perverting the course of public justice in the District Court. He is ordered to serve a term of 3 years’ imprisonment. Mr. Conman would like to apply for bail pending appeal against the conviction. Advise him as to the applicable procedure. **(6 marks)**