

PCLL CONVERSION EXAMINATION JUNE 2019

Title of Paper : Criminal Procedure
Date : 19 June 2019
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 5 pages, including Part A and Part B. A total of 50 marks may be awarded.
8. Part A contains one compulsory question with six sub-sections. The question contains no element of choice. Candidates should attempt all six sub-sections in the order in which they appear on the paper. Part A is worth 35 marks.
9. Part B contains two short questions. This part also contains no element of choice. Candidates must answer ALL two questions. Part B is worth 15 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 2019

Criminal Procedure

PART A (35 marks)

Long Fact Pattern

Question 1

Man Wai was allegedly robbed late one evening in her local park. She claims she was attacked from behind by a male who hit her head with his fist and then grabbed her shoulder bag and ran off with it. She further claims that a brief struggle ensued and the spectacles she was wearing were damaged when they fell to the ground. The police arrest Kevin on suspicion of being the robber. The police intend to hold an identification parade in which Kevin will be the suspect and hired actors will complete the line-up.

Question 1.1

(a) Is it compulsory for Kevin to participate in the parade? (b) If Kevin declines to participate in a parade, what are the implications for him? What if the officer in charge of the case decides that it is inconvenient for him to arrange a parade, and does not do so, what are the implications for the police? (c) Who will be in charge of the parade? (d) What requirements are there for the actors taking part in the parade?

(8 marks)

Kevin is positively identified by Man Wai and later charged with robbery, contrary to section 10 of the Theft Ordinance [NB: see Annex 1]. Kevin admits his presence in the park that evening but maintains his innocence. Whilst awaiting trial Kevin hears rumours that once or twice before Man Wai has made false allegations of robbery against other men. Kevin tells his solicitor, Polly, who then writes to the prosecution asking for any details. The prosecutor makes inquiries of the police. Polly is told that there is no record of any allegations of robbery previously made by Man Wai. But there is a record that twice Man Wai has made allegations of indecent assault against men and on both occasions she failed to attend court to give evidence. The prosecutor decides that this is not disclosable to the defence and writes saying that there is no such information.

Question 1.2

Is the prosecutor correct? Discuss the relevant legal framework.

(6 marks)

A copy of CCTV footage showing the park at the time of the alleged robbery is disclosed to Polly. She watches it and notes the poor lighting where the alleged victim is said to have been robbed. It is not possible to identify Kevin (or indeed anyone else clearly) from the images captured from the CCTV footage. At best, it shows that Man Wai appears to drop her handbag before a person wearing a hat walking behind her by a few seconds, picks it up, before running away.

The case eventually comes before the magistrates' court.

Question 1.3

If Kevin elects to have a preliminary inquiry and the magistrate who hears the inquiry rules that there is insufficient evidence to commit Kevin for trial, does this amount to an acquittal? (5 marks)

At Kevin's second appearance before a magistrate, the prosecutor is hesitant as to how to proceed.

Question 1.4

(a) If the prosecutor applies to have Kevin's case transferred to the District Court pursuant to s88 of the Magistrates Ordinance, can Kevin object to the prosecutor's application? (b) Does the magistrate have a discretion whether to transfer the case to the District Court? (c) Will the magistrate take a plea from Kevin before transferring his case? (8 marks)

In the end, Kevin does not elect for a preliminary inquiry and is committed for trial in the CFI on a date to be fixed.

Question 1.5

Kevin continues to believe that the prosecutions papers that have been served on him do not disclose a prima facie case against him. What, if any, action can he take before his trial begins? (4 marks)

Question 1.6

If Kevin is convicted as a first-time offender, and the robbery was committed on his 20th birthday, what should the court do prior to imposing any custodial sentence? (4 marks)

PART B (15 marks)

Short Answer Questions

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

Question 2

You have been handed a brief at 11am on Monday morning instructing you to attend the Tuen Mun Magistrates' Court at 2pm the same day to make a bail application on behalf of Mohammed Aswad. Mr Aswad has been charged with shoplifting from a local electrical store earlier in the day. You arrive at court at noon where you discover that Mr Aswad is a foreign national who is unable to speak Cantonese but has basic English skills. You are therefore able to extract the following details from him while you await an interpreter to attend court:

Mr Aswad is from Dhaka, Bangladesh but has lived in Hong Kong for four years having come here to find a better life. He has no children of his own and currently lives in a shared house in Yuen Long. When asked about his marital status, he replies, "I have a local girlfriend. She can't be here today because she is working as a cleaner." Mr Aswad is unemployed and supported by his girlfriend. To occupy himself, he has been helping out with the care of her six year old son who has medical problems. The lightbulb that Mr. Aswad is alleged to have stolen does not have any features which specifically link it to the electric shop although the shop does sell that brand. The evidence appears to rest on the testimony of the shopkeeper. Mr Aswad believes the shopkeeper dislikes him because they had an argument earlier in the year over "something stupid". He claims he was given the lightbulb by a friend although the friend is reluctant to come to court because he had a bad experience with the police. Mr Aswad has no previous convictions although he too has had some problems being asked for ID by police in the past.

If acting for the defence, how would you make an application for bail on behalf of Mr Aswad? What procedure should be followed and what considerations are important for the magistrate? (10 marks)

Question 3

In an appeal against conviction, the Court of Appeal finds that there was a "material irregularity" during the trial. What is meant by this term? What are the possible consequences for appeal? (5 marks)

S10 Theft Ordinance

Robbery

(1)

A person commits robbery if he steals, and immediately before or at the time of doing so, and in order to do so, he uses force on any person or puts or seeks to put any person in fear of being then and there subjected to force.

(2)

Any person who commits robbery, or an assault with intent to rob, shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for life.

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