

PCLL Conversion Examination
January 2020
Examiner's Comments
Criminal Procedure

Part A

Question 1.1

The topic on police power is often one of the most frequently asked questions in many of the past Conversion Examination papers. The first question on Jan. 2020 paper is designed to test the candidates' understanding of police duties and powers under various sections, such as ss. 10 and 21, of the Police Force Ordinance (PFO). The key issues are police powers to make an arrest without a warrant under s. 50 of the PFO and its common law principles as laid down in Yeung May Wan and others v HKSAR, FACC 19/2004. In addition, candidates are expected to address the issue as to whether or not an off- duty officer may exercise such power. A vast majority of candidates had failed to identify, let alone discuss, s.21 of the PFO as being one of the main issues of this question. They, instead, had unnecessarily engaged in lengthy discussions on irrelevant issues in respect of arrest powers granted to ICAC officers under s. 10 of the Independent Commission Against Corruption Ordinance.

Question 1.2

The focal issue of this question is whether the police have the power to enter into private premises, without a warrant, to effect an arrest. The factual background of the case is relatively straight forward. A high number of candidates were able to do reasonably well on this question.

Question 1.3

This question is designed to test the candidates' knowledge in relation to police powers to collect non- intimate samples from arrested persons who are suspected to have committed a serious arrestable offence. The answer rests squarely on s. 59C of the Police Force Ordinance ("PFO"). It turns out that a high percentage of candidates had wrongly applied their minds to s. 59 of the PFO which empowers the police to take finger- prints and photographs from arrested persons. Candidates are advised to familiarize themselves with ss.59A to 59F of the PFO which is concerned with the proper exercise of police power in collecting intimate and non- intimate samples from suspects.

Question 1.4

This question is straight forward and does not require analysis of complex legal issues. The answers provided by most of the candidates, however, suggest that they are unable to clearly distinguish between the functions of the Duty Lawyer Scheme and Legal Aid Schemes. The former is relevant to this question whilst the latter is completely irrelevant.

Part B

Question 2(a)

The answer to this question rests on ss. 80A, 80C and 81B of the Magistrates Ordinance. These provisions sufficiently spell out the procedures that Lily Lam must go through if she elects to plead guilty to the indictable offence of trafficking in dangerous drugs. Many candidates approached this question wrongly by discussing the process of Newton Hearings or explaining the application of s. 65C of the Criminal Procedure Ordinance.

Question 2 (b)

This question does not involve the discussion of difficult points of law and facts. The answer is clear and straight forward as the relevant provision (i.e. s. 81A of the Criminal Procedure Ordinance) is not difficult to comprehend. It was well handled by most of the candidates.

Question 3(a)

Many candidates had needlessly discussed in great length the difference between the Rehabilitation Centre, the Detention Centre and the Training Centre. To answer this question effectively requires a clear understanding of s.4(2)(b) of the Rehabilitation Centre Ordinance and s. 4(3) of the Detention Centre Ordinance. Had the candidates been able to concisely summarize the implications of these provisions, much of the writing time could have been saved.

Question 3(b)

Most candidates were evidently confused with the proper applications between ss. 3C and 3F of the Juvenile Offenders Ordinance (JOO). The former deals with situations where certain matters can be assigned to juvenile courts for hearings. The latter, on the other hand, deals with the power of other courts, including the District Court, as in this question, to remit the case to juvenile court for disposal. Only a handful of candidates were able to pinpoint that s. 3C is the answer to this question.