

PART B OF THE SINGAPORE BAR EXAMINATIONS 2020

Subject: **Criminal Litigation Practice**

Date: **Monday, 30 November 2020**

Time: **10.00am to 12.00pm**

Rules

1. The Singapore Institute of Legal Education Part B 2020 Examinations Rules shall apply.

Instructions for all Candidates

2. This question paper consists of 5 pages (inclusive of this cover page).
3. Answer ALL questions.
4. You must not collaborate, consult or communicate with any one or any entity (other than the Institute) in any manner during the Examinations. Anyone who does this (and those who assist them) can expect to be dealt with severely. If you are found to have collaborated, consulted or communicated with any one or any entity in any manner during the Examinations, you would be required, when seeking admission as an Advocate and Solicitor, to declare the incident in your affidavit of admission as an Advocate and Solicitor, and the Institute may object to your admission as an Advocate and Solicitor.
5. You are responsible for safeguarding the integrity of your answers and to that end, you must ensure that during the Examinations you (i) are not in close proximity with another person or persons such that your answers may be seen; and (ii) take all appropriate measures such that only you may see and have access to your answers.
6. If you think that there is a discrepancy, ambiguity, error or omission in any of the questions, you should address it within your answer.

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Ted is a youth with a severe gaming addiction. His addiction, which was recognised as a psychiatric condition when he was aged 15, was so severe that it led to his early discharge from National Service when he was aged 19. It was around the time of his discharge that he became hooked on 'Big Bazooka', a critically acclaimed real time strategy game played on mobile platforms.

The designers of 'Big Bazooka' implemented an innovative gaming interface that was premised on generating revenue through a combination of addictive gameplay and microtransactions, which gamers had to carry out in order to unlock new levels. Ted's gaming addiction got the better of him (again) and within a few months he had incurred spending to the tune of \$15,000 on his supplementary credit card in order to advance in 'Big Bazooka'.

Caught in this predicament and faced with his parents' wrath, Ted turned to crime to fuel his habit and pay off his credit card debts. He developed a *modus operandi* that entailed him lurking around residential estates in the east of Singapore during the wee hours on weekends and committing snatch theft of wallets, handbags and mobile phones from intoxicated victims returning home after clubbing. In this manner, Ted targeted a total of 10 victims (each on different occasions) and committed snatch theft of cash and property valued between \$800 and \$1,500 from each of them. The police eventually mounted an ambush and apprehended Ted just as he was about to approach his 11th victim. After arresting Ted, the police subjected his mobile phone to forensic analysis and discovered that he had also been taking upskirt photos and videos of unsuspecting female victims.

Ted was eventually charged with 10 counts of snatch theft and 40 counts of making a voyeuristic recording under sections 356 and 377BB(5) of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code") respectively. At the time of his initial prosecution, Ted had just turned 20.

Ted's parents are dismayed by his predicament and engage you as his defence counsel. In consultation with them, Ted instructs you that his priority is to avoid any sentence that will involve him 'being locked up or serving jail time'. He does not rule out claiming trial and believes that he has a somewhat viable defence as no one directly witnessed him committing the snatch thefts or making the voyeuristic recordings. When you question him about the contents of the statements he made to the police, Ted gives you non-committal answers and is extremely vague.

At a pre-trial conference, the DPP informs you that the Prosecution will proceed on 15 charges against Ted – comprising 5 reduced counts of theft *simpliciter* under section 379 of the Penal Code and 10 counts of making a voyeuristic recording – and apply to have the remaining 35 charges (comprising 5 counts under section 356 of the Penal Code and 30 counts under section 377BB(5) of the Penal Code) taken into consideration for sentencing if he pleads guilty at the pre-trial stage. Ted is giving careful consideration to this offer but he wishes to find out more before he commits to it.

Please advise him on the following:

- a. **What are the implications of Ted pleading guilty and having charges taken into consideration? (5 marks)**

- b. **If Ted pleads guilty at the earliest possible court date (i.e. when he is still 20 years of age), what are his prospects of avoiding 'being locked up or jail time' in line with his concerns? You can assume that Ted has no prior criminal record. (20 marks)**

Ted decides to plead guilty and accepts the Statement of Facts without qualification. He is convicted on the 10 proceeded charges at first instance. The Statement of Facts expressly states that (1) Ted used criminal force on his victims in order to snatch their property in relation to the section 379

charges; and (2) Ted was influenced by several voyeuristic websites and decided to record upskirt photos and videos of his own in relation to the section 377BB(5) charges. In line with Ted's instructions to seek a non-custodial sentence, you focus your mitigation plea on highlighting his youth and the fact that he pleaded guilty. However, midway through the mitigation plea, Ted feels nervous when he sees the District Judge's stern visage and gets cold feet. Ted asks to speak to you and instructs you to put forth several new arguments in mitigation.

Please advise him on the implications of making the following arguments, including the relevant procedures involved (in framing your answer, you can assume that Ted is relying on only the particular argument listed in parts (c) to (e) at any time and they are not conjunctive):

- c. **Ted claims that he did not 'snatch' any items from any of his theft victims, nor did he make any form of physical contact with them. Rather, he took the opportunity to steal from them as they were intoxicated and had passed out at their respective void decks such that their belongings were left next to them and easy for Ted to steal (5 marks).**
- d. **Ted claims that he only recorded some of the voyeuristic material that was found on his phone and that most of the material had been downloaded from the internet. He now cannot recall which ones were recorded and which ones were downloaded. For good measure, Ted also claims that some of the upskirt videos were filmed accidentally when he switched on the camera function his mobile phone by mistake. However, he is pleading guilty because he wants to 'save the court's time' and hopes for leniency (5 marks).**
- e. **Ted claims that he had been bullied as a child and developed Post Traumatic Stress Disorder which contributed to him committing the various offences. He claims that he had been seeing a psychiatrist, who can provide a report to substantiate that his condition significantly lessened his culpability. The Prosecution strenuously disputes this as there is a report from the Institute of Mental Health stating that Ted was not suffering from any psychiatric or mental health conditions, save for gaming addiction, and was of sound mind at the time of the offence (5 marks).**

Eventually, the District Judge rejects Ted's guilty plea on all the charges as he insists on making arguments that qualify it. Ted therefore claims trial. For the purposes of the trial, the Prosecution elects to proceed on the 10 original charges of snatch theft and stand down the 40 charges of making a voyeuristic recording for the time being. Pursuant to section 162 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC"), the Case for the Prosecution is served on you and you receive Ted's initial statement, made under section 22 of the CPC, in which he admitted to targeting intoxicated victims whilst they were stumbling home and snatching their property. Specifically, he admitted to lying in wait for such victims during the wee hours, from 2.00am to 4.00am, to minimise his chances of being caught, and that he chose such victims as they would be too intoxicated to resist him or chase him.

When you take his instructions, Ted informs you during the statement recording, the statement recorder, one Inspector James Tong ("Inspector Tong"), repeatedly called him a "vicious young punk" and threatened to "lock [him] up for a long time and make [him] suffer" unless he cooperated with the police. According to Ted, he confessed to his offences upon being intimidated by Inspector Tong. After recording Ted's admissions, Inspector Tong passed him a pen and told him to "quickly sign the statement and don't waste time". Ted claims that he was extremely fearful by this stage and signed the statement without Inspector Tong having it read back to him.

You carefully take Ted's instructions and file the Case for the Defence pursuant to section 165 of the CPC and reflect a detailed objection to the use of Ted's statement, based on his initial instructions in the preceding paragraph, in the summary of the defence. The matter now proceeds to trial. When the Prosecution attempts to admit Ted's confession, Ted informs the court that, besides the words that Inspector Tong directed at him, Inspector Tong also kept him waiting in a cold, air-conditioned room for at least 8 hours and denied him food, water and any opportunity to use the toilet before commencing the statement recording.

Subsequently, when all 10 victims take the stand, they positively identify Ted as the person who had snatched their belongings. While they were intoxicated at the material time, they were able to vividly recall Ted as he has a very distinctive mole on his left cheek.

Advise Ted on the following:

- f. **Ted is concerned that the Prosecution is proceeding on 10 charges of snatch theft against him in a single trial. He is of the view that it makes him 'look like a really bad guy and a delinquent'; and that the court will pre-judge his guilt on the basis that he must have committed the offences as he has been charged with 10 acts which are so similar in nature. Does Ted have any basis to ask for his charges to be tried separately? (5 marks)**
- g. **Taken by itself, can Ted's allegation that he signed the statement without having it read back to him affect its admissibility? (5 marks)**
- h. **What are the procedure(s) and principles governing whether the Prosecution can successfully admit Ted's confession against him? Please discuss with reference to Ted's allegation that Inspector Tong (allegedly) (1) repeatedly called him a "vicious young punk" and threatened to "lock [him] up for a long time and make [him] suffer" during the statement recording unless he cooperated with the police; and (2) physically ill-treated him by keeping him in a cold room without access to food, water and a toilet for 8 hours. In particular, are there any implications on admissibility arising from the fact that Ted's Case for the Defence did not contain any allegation to the effect that Inspector Tong physically ill-treated him? (20 Marks)**
- i. **The District Judge eventually calls upon Ted to give his defence. Ted instructs you that, if possible, he is keen to avoid giving evidence as he does not think he can take the stress of being cross-examined by the Prosecution. Advise Ted on (1) what it means to have his defence called (2) the options available to him at this stage and the implications of his choice (10 marks)**

After considering all the evidence against Ted, the District Judge convicts him of all 10 charges of snatch theft. By the time of his conviction, Ted is already aged 22. After considering sentencing submissions and your mitigation plea, the District Judge sentences Ted to the mandatory minimum sentence of one year's imprisonment per charge and orders the sentences for three charges to run consecutively for a total of three years' imprisonment. In his brief oral grounds of decision, the District Judge explains that he has balanced the severity of the offences and the need for general deterrence against Ted's relative youth and the need for the sentence to be "proportionate". He expressly states that "reformative training and probation are non-starters" but declines to impose caning as Ted is a first offender and his actions did not result in any actual or lasting physical harm on the victims.

Ted is shocked by the imposition of three consecutive custodial sentences as he was hoping that the sentence would run concurrently and that he could serve his sentence for all 10 charges 'at one go'.

Advise Ted on the following:

- j. Is the District Judge justified in (1) ordering the sentences for three offences to run consecutively and (2) finding that “reformative training and probation are non-starters”? (15 marks).
- k. If Ted remains dissatisfied as to the verdict and his sentence and is adamant about not wanting to spend a day in prison, what are the immediate steps he should take? (5 marks)

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