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**THE UNIVERSITY OF BRITISH COLUMBIA  
PETER A ALLARD SCHOOL OF LAW**

**FINAL EXAMINATION – APRIL 2019**

**LAW 221  
Section 001 (SCOW)**

**CRIMINAL LAW AND PROCEDURE**

**Professor J. Benedet**

**TIME ALLOWED: 3 HOURS  
TOTAL MARKS: 200**

**Note:**

**Students may bring only the following items into the examination room:**

- 1. A clean copy of the Pocket Criminal Code.**
- 2. Two 8½ x 11” standard sheets of paper (both sides) containing notes of the student’s choice.**
- 3. A standard English dictionary (not a legal dictionary or a translation dictionary).**

**Part A: Answer ALL of the questions in Part A. This Part is worth 130 marks and the recommended time for this part is 117 minutes.**

### **Terminal Velocity**

Xia and Yuki are students at the Horseshoe Bay School of Law in British Columbia. It is the end of the grueling first year exam period. Xia and Yuki plan to attend the after-exams party at a local pub and then take the ferry to Nanaimo to go camping that same night. Since they can only spend a couple of hours at the party in order to make the last ferry, Xia begins binge drinking as soon as she arrives at the pub. She consumes a large quantity of alcohol, hoping to intensify the effect with a couple of pink pills given to her by Yuki. By the time she leaves the pub, classmates notice that she seems out of control, dancing and randomly hugging her classmates. Yuki consumes only pizza.

Zeke has just started working at the ferry terminal. He is responsible for the safe loading of foot passengers on the ferry. The current MARSEC (Marine Security) Level is Level 2 of 3. This heightened level of security is based on intelligence that terrorists are likely to be active against a type of vessel or Marine Facility. Zeke has no information as to why the security level has been raised, but knows that he should be extra vigilant in reporting suspicious activity and may need to question passengers that raise security concerns.

Zeke observes Xia rushing up the ramp toward the ferry just as loading is about to end. She is sweating profusely and carrying a lumpy bag. Zeke attempts to stop Xia from boarding and asks her what is in her bag. She drops the bag and answers “it’s a nuclear warhead - on behalf of the Orca Liberation Army!” Zeke has been trained to take all such comments seriously, even though he believes that Xia is unlikely to be a real threat. He attempts to stop her from boarding. Yuki is following Xia up the ramp and sees her being restrained in a chokehold by Zeke; Xia’s face is turning purple. Fearing for her friend’s safety, Yuki picks up and opens the bag, which she and Xia packed together. The bag contains camping equipment, including a folding Swiss army knife that Yuki intends to use against Zeke. The bag also contains leaky propane canisters for the camp stove, as well as matches. When the bag is opened, the oxygen in the atmosphere triggers a loud explosion that results in flames and thick smoke. All of the other passengers flee the ferry to safety. In the commotion, Yuki finds the knife and lunges at Zeke, but accidentally stabs Xia in the chest instead. Xia collapses and is rushed, unconscious, to the hospital, where she later recovers.

Zeke fears he will be arrested for his use of force on Xia. He grabs the knife and storms the bridge of the ferry, waving it wildly. He tells Arlo, the captain and Bess, the first mate, to pilot the ferry up the coast where he plans to slip off in a lifeboat and disappear into the wilderness. Arlo complies, sailing the ship with Bess assisting him by checking the navigational charts. Thirty minutes later they are intercepted by the Coast Guard and Zeke surrenders.

**Assume that all of the above facts are true and provable in court. Based on these facts, answer ALL of the following questions.**

**A1.** Xia is charged with committing a hoax regarding terrorist activity, contrary to s. 83.231(1)(a) of the *Criminal Code*. You are the Crown prosecuting Xia. Outline your case and respond to any arguments you anticipate the defence might make. Will she be convicted of this offence? (Assume that, if the bag did contain a nuclear warhead, this would amount to “terrorist activity.”) **(40 marks)**

**A2.** Yuki is charged with (i) breach of duty re explosives contrary to s. 80(b) of the *Criminal Code*; (ii) aggravated assault of Xia, contrary to s. 268 of the *Criminal Code* and (iii) attempting to assault Zeke with a weapon, contrary to s. 24(1) and s. 267(a) of the *Criminal Code*.

Which of these charges is most likely to result in the conviction of Yuki, and why? What is the maximum sentence that Yuki could receive for each offence? **(50 marks)**

**A3.** Arlo and Bess are charged with piracy (piratical acts) contrary to s. 75(a) of the *Criminal Code*. They consult you, a defence lawyer, about whether they will be convicted. What do you tell them? (Assume that taking the ferry on an unauthorized voyage is “stealing.”) **(40 marks)**

**Part B: Answer 3 of the 4 questions in Part B. Each question is worth 10 marks for a total of 30 marks. The recommended time for Part B is 27 minutes. DO NOT ANSWER ALL 4 QUESTIONS.**

**Each of the following statements contains one or more errors. Identify the error(s) and explain why they are incorrect.**

**B1.** An accused who gives an air of reality to the defence of provocation will be entitled to an acquittal where the provocation negates his intent to kill.

**B2.** Non-mental disorder automatism cannot be raised as a defence where the dissociative state is likely to recur.

**B3.** Where an accused is charged with sexual assault, the Crown must prove that the complainant said “no” to the accused through her words or actions; the defence must prove that the accused took reasonable steps to determine if the complainant was consenting.

**B4.** A provincial offence with a penalty of imprisonment will always be a strict liability offence.

**Part C: Answer 1 of the 2 questions in Part C. Each question is worth 40 marks and the recommended time for Part C is 36 minutes. DO NOT ANSWER BOTH QUESTIONS.**

**C1.** Why does the criminal law permit the use of objective fault requirements for some offences? Is this consistent with the principle of fundamental justice that the morally blameless not be punished?

**C2.** Are there circumstances in which duress or necessity could fairly be raised as a defence to murder? What explains the differing approaches of judges to this question?

**END OF EXAMINATION**