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**THE UNIVERSITY OF BRITISH COLUMBIA
FACULTY OF LAW**

EXAMINATION – APRIL 2019

**LAW 221
(Criminal law and Procedure)**

**Section 002
Emma Cunliffe**

MARKS: 100

TIME ALLOWED: 3.0 HOURS

NOTES:

1. This is a limited open book examination. You may only bring the required materials (*Criminal Code*, Roach et al casebook), an English language dictionary, your own CANS, notes and class handouts and materials posted onto Canvas into the examination room. Use of CANS prepared wholly by other students, library books, other texts and of devices such as cell phones or headphones is prohibited during the examination. (Students may type their answers on a laptop that is running Examsoft software.)
2. Please answer all three questions, giving reasons for your answers. If you need additional facts to answer a question, identify the missing facts and state why they are necessary.
3. Your grade in this test will count as 100% of your final course grade, unless counting your December grade will increase your score.
4. Suggested times are given for each part.

**THIS EXAMINATION CONSISTS OF THREE QUESTIONS
ANSWER ALL QUESTIONS**

MARKS40 1. **[Recommended time: 72 minutes]**

Consider the following quote:

The Canadian criminal justice system has failed the Aboriginal peoples of Canada — First Nations, Inuit and Métis people, on-reserve and off-reserve, urban and rural — in all territorial and governmental jurisdictions. The principal reason for this crushing failure is the fundamentally different world views of Aboriginal and non-Aboriginal people with respect to such elemental issues as the substantive content of justice and the process of achieving justice.

Royal Commission on Aboriginal Peoples, *Bridging the Cultural Divide: A Report on Aboriginal People and Criminal Justice in Canada* (1996) cited in *R v Ipeelee*, 2012 SCC 13 at [57].

Do you agree with the conclusions that Canadian justice has failed Indigenous people and that the principal reason for that failure is the fundamentally different world views of Indigenous and non-Indigenous people? Explain your answer, drawing upon one or more examples we have studied this term in Criminal Law & Procedure.

MARKS20 2. **[Recommended time: 36 minutes]**

Mr William Walpole has been charged with attempting to commit mischief contrary to s. 430(1.1)(a) of the Criminal Code. You act as defence counsel on behalf of Mr Walpole.

At the time of the events that gave rise to this charge, Mr Walpole was the Chief of Staff in the Office of the Premier for a Canadian province. The Premier and Cabinet were facing an extended political crisis which focused on their costly decision to cancel a large infrastructure contract. Numerous media outlets had submitted freedom of information (FoI) requests to the Office of the Premier under provincial legislation. This legislation imposes a legal obligation upon the Office and its employees to retain any data or document that is potentially the subject of an FoI disclosure from the moment when a request is made.

The evidence disclosed by the Crown establishes that when the FoI requests were made, the incumbent Premier was in the process of handing office to another member of his political party. This handover was part of a political strategy to contain the fallout from the infrastructure scandal. Mr Walpole was tasked by the outgoing Premier with preparing the Office for handover. In this capacity, he had issued instructions to all political staff about what emails should be kept and what deleted pursuant to applicable law and regulations. However, in the disruption surrounding the political scandal and leadership transition, employees had very little time for records management and three employees will testify that they had not deleted emails relating to the infrastructure contract and political decision-making that they would normally routinely have destroyed.

Emails obtained by the Crown show that Mr Walpole had used strong language to express concern about the possibility that damaging emails would be disclosed through the FoI process, thereby undermining the transition strategy. He approached the public sector's IT department requesting help with the transition, but when the FoI requests were received, the IT department adopted the view that no email or file should be deleted until the requests had been dealt with.

The Crown will allege that when Walpole received this directive from the IT department, he adopted a new strategy. The Crown will prove that the outgoing Premier's political party paid an IT consultant, Reza Ghorbani. On the day of the leadership transition, Walpole gave Ghorbani the administrative login for each computer in the Office, and instructed him to 'clean' the computers and associated email accounts. He said that the purpose of this exercise was to ensure that no personal or political files were retained. Ghorbani cleaned each computer thoroughly, replacing the hard drive and essentially returning it to its factory settings.

Walpole was unaware that all email accounts were automatically backed up to central servers every 24 hours. Accordingly, the Crown evidence suggests that it was possible for the public service IT department to retrieve all of the emails and files that would otherwise have been lost as a result of Ghorbani's work. Existing precedents establish that emails and files are computer data for the purposes of the *Criminal Code*.

Advise Mr Walpole about whether he is likely to be convicted of attempt to commit mischief; or alternatively whether he has a reasonable prospect of acquittal. In your advice, consider whether the Crown is likely able to prove the *actus reus* and *mens rea* of attempted mischief. Do not consider any defences that may arise from these facts.

MARKS40 3. **[Recommended time: 72 minutes]**

Mr Brambleberry Cramplepatch has been charged with theft contrary to s. 334(a) of the Criminal Code. You are sitting as trial judge, without a jury, in this case.

The Crown has proven the following facts:

On 2 July 2017, Cramplepatch and his partner Mr Marvin Liberty attended a car dealership on Southeast Marine Drive in Vancouver to test drive a 1992 Mitsubishi Lettuce worth \$10,500. The dealership photocopied Liberty's driver's licence and allowed the pair to take the car for a test drive. Cramplepatch drove the car to a nearby Chinook Tyre Store and had a duplicate ignition key made. They then returned the Mitsubishi Lettuce and original key to the car dealership.

Four nights later, the Mitsubishi Lettuce was stolen from the dealership's lot. The person who stole the car has never been identified, and nor has the car been found. However, CCTV footage shows a person dressed in jeans, a hoody and a ball cap use a key to enter the driver's side door before the car drives off the dealer's lot. The Crown case is that the person who drove the car away from the dealer's lot is neither Cramplepatch nor Liberty. Cramplepatch and Liberty have testified that they do not recognise the person on the CCTV footage.

These facts are sufficient to prove theft contrary to s. 334(a) beyond a reasonable doubt.

Cramplepatch has testified. He states that he attended Gladstone High School with Mr Andrew Shackleton. Shackleton's family own a metal and scrap yard in Delta, BC. Liberty's son, Burberry, worked at the scrap yard for three years. Cramplepatch testifies, and the Crown concedes that police have evidence to support, that Shackleton is heavily involved in drug importation and trafficking in the lower mainland.

According to Cramplepatch, in 2015, he and Liberty learned that Burberry had become involved in Shackleton's drug importation business and that Burberry was himself addicted to opioids. Cramplepatch and Liberty staged an intervention with Burberry, confronting him with evidence of his addiction and sending him to a private rehabilitation centre in the gulf islands. After Burberry was discharged from rehab, he lived with

Cramplepatch and Liberty. Sadly, he rapidly returned to his addiction, and died of a fentanyl overdose in early 2017. When Burberry died, Cramplepatch and Liberty were discussing whether to move with Burberry to another province to remove him from Shackleton's orbit. They could not afford to send Burberry back to rehab.

After Burberry's death, Shackleton began to threaten Cramplepatch and Liberty. Shackleton claimed that Burberry owed Shackleton \$7,000 in unpaid debts. Cramplepatch and Liberty assumed that this debt related to Burberry's consumption of drugs or his participation in Shackleton's drug business. Cramplepatch testified that they considered going to the police about the threats, but they were scared of taking this step because Shackleton's brother is a senior member of the RCMP and Shackleton said that if they reported him to police, he would find out and the consequences would be dire.

The Crown confirms that Shackleton's brother is indeed a senior member of the RCMP, and is based in the Surrey BC detachment. However, the brother denies any wrongdoing or any knowledge of such threats on the part of Andrew Shackleton. He states that he and his brother have been estranged since early adulthood.

Cramplepatch testifies that one night in June 2017 he was alone, drinking a beer at a pub near his home. Shackleton approached him with another man, Duguay, whom Cramplepatch also knew from school. Cramplepatch was aware that Duguay has an extensive criminal record for theft and violence. Cramplepatch says that Shackleton and Duguay again raised the matter of Burberry's debt, and Cramplepatch explained – as he had previously – that he and Liberty had no savings after paying for Burberry's rehab. Duguay and Shackleton then suggested that there may be an alternative way for Cramplepatch to 'work off the debt.'

The two men explained to Cramplepatch that they were involved in stealing rare Japanese cars, refurbishing them and sending them overseas to be sold. However, Vancouver-based car dealers had become suspicious after several thefts of such cars. They explained to Cramplepatch that they wanted him to test drive several such cars and duplicate the ignition keys prior to returning the cars.

Cramplepatch protested, saying that he would be found out immediately because he had no poker face. Shackleton and Duguay responded 'well, you need to find \$7,000, or face the consequence. Do you have a better idea about how you'll raise the money?' They then proceeded to ask if Cramplepatch and Liberty were planning to visit Liberty's parents'

cottage, in a remote part of BC, that summer. Shackleton reminded Cramplepatch that he knew 'every washout' along the dirt road from which this cottage is accessed. Cramplepatch testified that he considered this conversation to be a veiled threat to himself and his family.

Cramplepatch testified that he did not tell Liberty about this conversation, but resolved to go along with Shackleton and Duguay's scheme. Liberty's testimony corroborates much of Cramplepatch's account, including the earlier demands for payment. Liberty states that Cramplepatch suggested out of the blue that they test drive the Mitsubishi Lettuce, that he has never shown any particular interest in cars, and that he was white and shaking when they took the test drive and when he emerged from Chinook Tyre.

Cramplepatch's lawyer has urged you to find Cramplepatch not guilty of this crime on the basis that he acted in self-defence or, alternatively, under duress. Crown counsel argues that Cramplepatch should be convicted of theft as charged. Write your verdict in this case.

END OF EXAMINATION