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Return this exam question paper to your invigilator at the end of the exam before you leave the classroom.

THIS EXAMINATION CONSISTS OF 4 PAGES (INCLUDING THIS PAGE)
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THE UNIVERSITY OF BRITISH COLUMBIA
PETER A. ALLARD SCHOOL OF LAW

FINAL EXAMINATION – APRIL 2019

LAW 221
CRIMINAL LAW & PROCEDURE

Section 3
Professor Benjamin Perrin

TOTAL MARKS: 100

TIME ALLOWED: 3 HOURS
(includes reading time)

NOTE: This is an open book examination. Students may refer to course materials (Casebook, Criminal Code (Annotated or otherwise), handouts, additional assigned readings) and notes that they have personally brought into the examination room. Students are not permitted to share materials.

THIS EXAMINATION CONSISTS OF 3 QUESTIONS

MARKS**60 QUESTION #1: Fact Pattern**

On December 31, 2018, four friends (Amy, Betty, Cameron, and Duke) were drinking heavily at a cabin on the Sunshine Coast in British Columbia. At 11 pm, they all staggered down to the beach with flashlights and stole a canoe (it had a large warning label inside that said: "WARNING: maximum two adults"). They all got into the canoe and began paddling in the light of a full moon, taking turns drinking and paddling for approximately one hour, with each of them occasionally passing out for 10-15 minutes at a time.

At midnight, Duke's phone alarm rang and played a Happy New Year song that he had programmed to play earlier in the day. Duke stood up in the canoe with his flask of whisky and shouted "Happy New Year!" The canoe immediately capsized and all four friends fell into the frigid ocean water. Amy and Cameron drowned, while Betty and Duke each grabbed a life jacket that had been in the bottom of the boat, and were able to slowly swim to shore.

As soon as she reached shore, Betty lay in the fetal position, unable to move and in a state of severe hypothermia. Duke saw her and said: "I'll get help."

Duke saw a small light some 750 meters away, and he began yelling, "Help! Help!" But he too was suffering from hypothermia such that he was rapidly losing the ability to move and was unable to shout any more. He staggered toward the light without calling out again. As he got closer, he realized it was a home that was completely dark except for a porch light. Duke tried unsuccessfully to open the front door of the home. He kicked the door hard and it opened. He went inside the home and had forgotten entirely about Betty (who was later found dead from hypothermia). Duke didn't know why he was inside the home or what he was doing, just that he was very, very cold and wet.

Unbeknownst to Duke, there was a family asleep in the home he'd entered: a married couple (a 45-year-old husband named Mike and his 42-year-old wife) along with their three young children (ages 2, 4, and 9). Mike awoke from the sound of Duke kicking the front door open. Mike had watched countless horror movies and was convinced that the intruder would kill him and his entire family. Mike had a metal baseball bat under his bed for protection for just such an event. As Duke entered Mike's bedroom, Mike hit Duke hard with the baseball bat on the head. Duke fell to the ground. The two men were of equal size, but Duke was more physically fit and younger at 22 years of age.

Question 1, continued

Mike and Duke struggled in the dark, as Duke said, "Stop! Help me!" Mike hit him again with the baseball bat, breaking several bones in Duke's foot. Duke screamed in pain but managed to gain control of the baseball bat. Duke then began striking Mike in the head with the baseball bat until Mike stopped moving. Duke then passed out. Mike survived but spent 6 weeks in intensive care and continues to suffer from traumatic brain injury as a result of this incident.

You are a summer law student working for defence counsel to Duke, who has been charged with breaking and entering, contrary to section 348(1)(a) of the *Criminal Code*, and the attempted murder of Mike, contrary to section 239 of the *Criminal Code*, in relation to this incident. Draft a legal memorandum for defence counsel recommending all of the potentially viable ways to defend Duke in relation to these criminal charges. Your response should cite relevant legal authorities.

RELEVANT OFFENCES

Attempt to commit murder

239 (1) Every person who attempts by any means to commit murder is guilty of an indictable offence and liable [...]

(b) in any other case, to imprisonment for life.

* * * * *

Breaking and entering with intent, committing offence or breaking out

348 (1) Every one who

(a) breaks and enters a place with intent to commit an indictable offence therein, [...]

is guilty

(d) if the offence is committed in relation to a dwelling-house, of an indictable offence and liable to imprisonment for life, [...]

MARKS

20 QUESTION #2: Development of the Law

Identify and discuss what you think are the three (3) most significant legal changes to Canadian criminal law since 1980. Explain why each change is so significant, citing relevant legal authorities and other course materials.

20 QUESTION #3: Policy

Choose **ONE** of the following questions to respond to, citing relevant legal authorities and other course materials:

A) How does Canadian criminal law deal with crimes committed by people with substance use disorders? What reforms, if any, should be adopted in this regard and why?

B) How does Canadian criminal law deal with crimes committed by people with mental disorders? What reforms, if any, should be adopted in this regard and why?

C) Should mandatory minimum penalties of imprisonment be abolished? Why or why not?

END OF EXAMINATION