

Write your exam code here: _____

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

Attachments:

- 1. Course Outline (2 pages)**
- 2. Table of Contents (7pages)**

**THIS EXAMINATION CONSISTS OF 2 PAGES, INCLUDING THIS PAGE
PLEASE ENSURE THAT YOU HAVE A COMPLETE
PAPER**

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

FALL SEMESTER EXAMINATION - DECEMBER 2018

**LAW 221
Criminal Law and Procedure**

**Sections 4
Professor Harris**

TOTAL MARKS: 100

TIME ALLOWED: 1 HOUR and 10 minutes reading time

NOTE:

- 1. This is a closed book examination, but students may bring two pages of notes to the exam and an unannotated *Criminal Code* with tabs. The notes can either be on one two-sided page, or two one-sided pages.**
- 2. THIS EXAMINATION CONSISTS OF 1 QUESTION.**

Peter Poll and Alan Accused are charged with Arson contrary to section 434 of the *Criminal Code* and their charging sheet reads as follows:

Alan Accused and Peter Poll, on or about March 15, 2018 in the City of Vancouver and the Province of B.C., did violate section 434 of the *Criminal Code* by damaging a cabinet in the Quality Pharmacy Building at 232 Main Street.

Alan Accused and Peter Poll wanted to steal some chemicals from a local pharmacy on 232 Main Street in Vancouver, B.C. The chemicals were kept in a locked wooden cabinet at night, and Accused was able to get a key for the back door of the pharmacy, and the number for the combination lock on the wooden cabinet, from a pharmacy employee. The employee told Accused and Poll that the pharmacy changed the number on the combination lock every four weeks, and told them that the number he just gave them had been selected a week ago.

A month later, Accused and Poll went to the back door of the pharmacy after it closed for the evening. Accused noticed that Poll brought a blow torch with him and he asked Poll what it was for. Poll said to Accused that if the number for the combination lock did not work he was going to use the blow torch to burn a hole in the cabinet. Accused told Poll that the number for the combination lock would likely work so they did not have to worry about a back-up plan.

Accused used the key to open the back door of the pharmacy, and then Poll tried the number provided by the employee on the combination lock. The number did not work, and Poll started using the blow torch on the cabinet to try and burn through it. The cabinet was very strong and the flame from the blow torch was having little effect on the cabinet. A minute later the flame from the blowtorch triggered the fire alarm and an automatic sprinkler started spraying water in the area of the cabinet. The fire department arrived a couple of minutes later, and Poll and Accused ran off. The fire department saw there was no fire and left. However, the fire department forgot to turn off the sprinkler, and it continued to spray all night. The next day the cabinet was found to be warped due to significant water exposure.

Peter Poll did not testify. Alan Accused did testify at trial, and said as follows:

We did break into the pharmacy to steal some chemicals. However, I was sure that the number for the combination lock would work. I was really shocked when Poll started using the blowtorch on the cabinet.

Please provide an opinion concerning whether Peter Poll will likely be found guilty and whether Alan Accused will likely be found guilty. In your opinion, please include a discussion of all essential elements of the offence. Please assume that section 434 of the *Criminal Code* is constitutional.

END OF EXAMINATION

Class 1: Role of Crown Counsel:

- Minister of Justice: 271-272, 281-283
- Approving a Charge: Charge Approval Standard, B.C. Policy Manual
<https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/prosecution-service/crown-counsel-policy-manual/cha-1.pdf>
- Selecting Code Provision and Charging Summarily or By Indictment: see sections 266, 267, 786, 787 of the *Criminal Code*

Class 2: Sources of Criminal Law

Video 1: Introduction to the Crown Proving the Offence: <https://youtu.be/sgvthqDHY1s>

91(27) of the *Constitution Act*: pp. 1-11

Codification: pp. 17-18

Defining Criminal Law: pp. 63-71

Classes 3-5: The Impact of the *Canadian Charter of Rights and Freedoms*

Supremacy of the *Charter*: *R. v. Sharpe*, [2001] 1 S.C.R. 45 at paras. 1-29, 72-130
<http://canlii.ca/t/523f>

Section 7 of the *Charter*: pp. 32-36, 97-114

Classes 6-7: The Essential Elements of an Offence

Charging Sheet: *R. v. Saunders*, [1990] 1 SCR 1020 <http://canlii.ca/t/1fsvd>

Identity: *R. v. Sheppard*, 2006 CanLII 21748 (NLPC) <http://canlii.ca/t/1nq1w>

Interpreting Statutory Elements: pp. 43-49; *R. v. Clark*, [2005] 1 SCR 6 <http://canlii.ca/t/1jmfj>;
pp. 452-454

Classes 8-9: The Burden of Proof

Onus and Burden: pp. 316-329; *R. v. Killo, Lubkey and Toupin*, 2003 BCSC 1926,
<http://canlii.ca/t/1g674>

The Burden of Proof and Credibility and Circumstantial Evidence: *R. v. J.H.S.* 2008 SCC 30,
<http://canlii.ca/t/1x1bb>; *R. v. Villaroman*, 2016 SCC 33 at paras. 1-43, <http://canlii.ca/t/gsq3b>

Direct Verdicts: *R. v. Charemski*, [1998] 1 S.C.R. 679 at paras. 1-14, <http://canlii.ca/t/1fqtc>

Classes 10-11: Defining the *Actus Reus*

Acts and Omissions: pp. 339-346

Circumstances: pp. 356-359

Concurrence: pp. 401-405

Causation: 361-367, 387-395

Classes 12-14: Subjective Mens Rea

Video 2: Introduction to Fault Standards in Criminal Law: <https://youtu.be/0koSyDUIJTM>

Subjective Requirement: pp. 447, 454-458, 460-465, 470-472; *R. v. Tatton* 2015 SCC 33 at paras. 30-39, 46-49, <http://canlii.ca/t/gjcji>

Review of Proof of Offence: *R. v. Lamb*, 2010 BCSC 1911 <http://canlii.ca/t/2fhq5>

Classes 15-16: Modes of Participation

Principals and Aiding and Abetting: pp. 525-536; 542-552; *R. v. Roach*, 2004 CanLII 59974 (ON CA) <http://canlii.ca/t/1v6n0>

Group Participation: *R. v. H. (L.I.)*, 2003 MBCA 97 <http://canlii.ca/t/5878>

Combining Aiding and Mere Presence: *R. v. C.P.*, 2014 BCSC 2570 <http://canlii.ca/t/gxcrz>

Classes 17-18: Areas of Offences

Class Exercise I: Fact Patterns

Offences against the Person: *R. v. Foti*, 2002 MBCA 122 <http://canlii.ca/t/5htb>

Financial Offences: pp. 466-470

Offences Against the Administration of Justice: *R. v. Buzeta*, 2003 CanLII 12456 (ON SC), <http://canlii.ca/t/7cx7>

Possession Offences: *R. v. Muthuthevar*, 2012 ONSC 4008 (CanLII), <http://canlii.ca/t/fs0k5>
ONSC 4008 (web)

Classes 19-21: Non-Subjective Fault Requirements

Strict Liability: pp. 415-424, 510-512

Objective Fault: pp. 480-492

Charter Limitations: pp. 425-430, 715-723, 492-496, 474-479

R. v. Mills, Hylton, Dennis, 2013 ONSC 5051 <http://canlii.ca/t/g0989>

Class 22-24: Danger of Wrongful Convictions

- Watch the Documentary “**David and Me**”:
<http://tvo.org/video/documentaries/david--me-feature-version>
<http://www.innocenceproject.org/> (look at 6 causes set out at bottom on web page)
- The Danger of Prejudice Against Indigenous Accused and Indigenous Victims
R. v. Rogers, 2000 CanLII 22829 (ON SC), <http://canlii.ca/t/1wd0z>
R. v. Williams, [1998] 1 SCR 1128 <http://canlii.ca/t/1fqsg>
Excerpt from the Report of the Aboriginal Justice Inquiry of Manitoba:
<http://www.ajic.mb.ca/volumel/chapter4.html>

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