

**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 (3 pages)**
- 2. Chart of Offences (1page)**

**THIS EXAMINATION CONSISTS OF 3 PAGES  
PLEASE ENSURE THAT YOU HAVE A  
COMPLETE PAPER**

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

**FINAL EXAMINATION - FALL 2018**

**LAW 400  
ADVANCED CRIMINAL PROCEDURE**

**Section 1  
Professor Harris**

**TOTAL MARKS: 100**

**TIME ALLOWED: 2.5 HOURS and 10 minutes  
reading time**

**Note: This is a closed book examination, and students can only bring to the exam two double sided pieces of paper (or 4 single sided pages) with notes, and an unannotated *Criminal Code* with tabs.**

**THIS EXAMINATION CONSISTS OF 3 QUESTIONS. ANSWER ALL 3 QUESTIONS.**

**Question 1 (50 Marks)**

Alan Accused and Peter Poll on November 1, 2017 were charged with assault causing bodily harm in relation to events which occurred in the Good Times Bar in Vancouver, B.C. The charging sheet in Count 1 reads that “Alan Accused did commit assault causing bodily harm against Vince Victim contrary to section 267(b) of the *Criminal Code* on March 1, 2017 in the Good Times Bar in the City of Vancouver in the Province of B.C.” Poll is also facing a charge of assault causing bodily harm against Victim in Count 2 of the same charging sheet.

Accused and Poll were friends who were in the Good Times Bar on March 1, 2017 and Accused and Poll started having an argument with Vince Victim. The Bar was full that night and many witnesses say that they saw a couple of initial punching incidents involving Accused, Poll and Victim. These witnesses said things then got more serious later in the evening when they saw Poll and Accused get into a big fight with Victim. The witnesses said both Poll and Accused seemed to be throwing lots of punches at Victim during this big fight, and that Poll was the most aggressive.

Accused’s version of events is that it was only Poll who was involved in the big fight with Victim. Accused said that when Poll started the big fight with Victim, he reached out and tried to pull Poll away from Victim, and that the witnesses must have mistaken his reaching motion for punches.

The police later arrived at the Bar, and a number of witnesses told them that Accused and Poll had beaten up Victim. The police arrested Accused for assault causing bodily harm and noticed that Accused was carrying a backpack. They searched the backpack and found some brass knuckles in it. The police then looked at Victim’s face and saw that he had some injuries which could be consistent with being caused by brass knuckles.

The Crown has elected to proceed summarily, and the trial date is currently set for February 1, 2019. Accused has been given disclosure, but he does not have witness statements for two of the witnesses that appear to have been interviewed by the police.

You are a defence lawyer and Accused comes to see you two months before the trial. Accused said he cannot afford to hire you because he has low paying job, but you agree to advise him on any motions he might want to bring before the trial or at the outset of the trial.

**Are there any reasonable motions you advise Accused to pursue? Please also advise why you think these motions will, or will not, likely be successful.**

**Question 2 (30 Marks)**

Paul Prosecutor is Crown Counsel, and he was assigned to consider whether First Financial should be charged with fraud based on some misleading statements it allegedly made about financial products it was selling. Prosecutor approved fraud charges against First Financial on September 15, 2018.

Diane Defence is a defence lawyer representing First Financial on the fraud charges. After charges were approved, Elin Employee came to see Defence in her office. Employee tells Defence that she is a senior manager at Global Systems which is a major competitor with First Financial. Employee tells Defence that Global Systems last year made a major financial contribution to a charity, and Paul Prosecutor is the Chair of the Board of that charity. Employee says that on September 10, 2018, she was working late at night in the Global Systems Building, and she went to look for an old file in the basement. Employee said she saw Prosecutor meeting with the President of Global Systems in a small office in the basement. Employee said she could not hear what was being said, but she saw that both the President and Prosecutor were taking notes while they talked.

First Financial thinks it was charged due to Global Systems' influence over Prosecutor, and wants the charge approval decision overturned. Defence has reviewed the case against First Financial and thinks it is a weak case of fraud.

**What steps could Defence take to attempt to have the charge approval decision overturned, and do you think Defence will have any likelihood of success in reaching this objective?**

**Question 3 (20 Marks)**

Choose two areas we have studied in the course, and:

- i. argue why **one area does** properly balance the rights of the accused and the public interest in effective prosecutions; and
- ii. argue why a **second area does not** properly balance the rights of the accused and the broader public interest in effective prosecutions.

Please provide reasons for your arguments.

**END OF EXAMINATION**

## **PRE-TRIAL**

### **Week I**

#### **Charge Approval**

*R. v. Nixon*

*R. v. Malik, Bagri and Reyat*

B.C. Charge Approval Standard (obtain online)

<https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/prosecution-service/crown-counsel-policy-manual/cha-1.pdf>

### **Week I / II**

#### **The Indictment**

*R. v. Saunders*

*R. v. R.(G.)*

*R. v. J.B.M.*

*R. v. Moore*

*R. v. Millington*

*R. v. Harris*

*R. v. Irwin*

*R. v. Heaney*

*Criminal Code* sections 581-587, 601, 660-662 683(1)(g)

### **Week III**

#### **Bail and Counsel**

*R. v. Parsons*

*R. v. St-Cloud*

*R. v. Tunney*

*R. v. Manasseri*

*R. v. Tremblay*

*Criminal Code* sections 469, 496-499, 515, 679, *Charter* section 11(e)

### **Week IV**

#### **Disclosure**

*R. v. Baxter*

*R. v. Bjelland*

*R. v. McNeil*

*Charter*, section 7

### **Week V**

#### **Severance**

*R. v. Suzack*

*R. v. McEwan*

*R. v. Last*

*Criminal Code* sections 589, 591

## **Week VI**

### Rulings

Section 8 of the *Constitutional Question Act*, RSBC, c. 68

*R. v. Sipes*

*R. v. Vukelich*

*R. v. Bains*

## **Week VI/VII**

### Powers of Search and Arrest

*R. v. Amare*

*R. v. Juan*

*R. v. Mann*

*R. v. Pope*

*R. v. Fearon*

*Hunter v. Southam*

*R. v. Wilson*

*Criminal Code* section 495; *Charter*, sections 8, 9

## **Fact Patterns 1 and 2**

## **Weeks VIII-IX**

### Class of Offence and Applicable Time

*R. v. Dudley*

*R. v. Dineley*

## **THE TRIAL**

### **Juries**

#### Role of Trial Judge

*R. v. Gunning*

*R. v. Krieger*

#### Closing Addresses

*R. v. Rose*

*Criminal Code*, section 651

#### Bias Against Indigenous Accused and Victims

*R. v. Williams*

*R. v. Rogers*

## **Week X**

### Unreasonable Delay

*R. v. Jordan*

*Charter*, section 11(b)

## **THE APPEAL**

### **Introduction to Appellate Process: Video Overview**

<https://www.youtube.com/watch?v=dnr2ahKt7DM>

### **Weeks X-XII**

#### **Powers of Appellate Court**

*Criminal Code* sections 675-678, 683, 686, 812, 813; Video

#### **Level of Deference**

*R. v. Grouse*

#### Errors of Fact

*R. v. Zadeh*

*R. v. Caron*

#### **Errors of Law and Reversible Error**

*R. v. Austin*

*R. v. Sarrazin*

#### **Misapprehensions of Evidence**

*R. v. Shen*

#### **Unreasonable Verdicts**

*R. v. Mars*

*R. v. Willis*

**SUMMARY  
CONVICTION  
OFFENCES**

**INDICTABLE OFFENCES**

**PROVINCIAL  
OFFENCES**

<p><u>Trial:</u> before Provincial Court Judge - Part XXVII</p> <p><u>Appeal:</u> 1. to Supreme Court Judge, following same procedure as in Court of Appeal (ss 813, 822(1)) - or - 2. by Trial de Novo before Supreme Court Judge, by order of same (ss 813, 822(4)) - or - 3. on transcript or agreed statement of facts to Supreme Court Judge on ground of law or jurisdiction only (s.830(1) &amp; (2))</p> <p><u>Further Appeals:</u> to Court of Appeal on question of law only, with leave (s.839) - and - to Supreme Court of Canada on question of law or jurisdiction, with leave (S.C.A., s.40(1), (3))</p> <p>Note: ss 675(1.1), 676(1.1) permit appeals, with leave, directly to the Court of Appeal with an indictable appeal arising out of the same trial</p>	<p>Within Absolute Jurisdiction of Provincial Court Judge</p> <p>** are listed in s.553</p> <p><u>Trial:</u> before Provincial Court Judge - Part XIX</p>	<p>Upon which an accused is given an Election</p>	<p>Which can only be tried by a Superior Court of Criminal Jurisdiction</p>	<p>** Procedure found in <i>Offence Act</i> (B.C.)</p> <p><u>Trial:</u> before a "Justice" (Judicial J.P., or Provincial Court Judge)</p> <p><u>Appeal:</u> 1. to Supreme Court Judge following same procedure as in Court of Appeal (s.109(1)) - or - 2. by Trial de Novo before Supreme Court Judge, by Order of same (s.109(3)) - or - 3. to Supreme Court Judge, by Stated Case, on ground of law or jurisdiction only (s.115(1))</p> <p><u>Further Appeals:</u> to Court of Appeal on question of law alone with leave (s.124) - and - to Supreme Court of Canada on questions of law or jurisdiction, with leave (S.C.A., s.40(1), (3))</p>
<p>** are listed in s.536(2)</p>	<p>Provincial Court Judge</p>	<p>Judge without a Jury</p>	<p>Court composed of Judge and Jury</p>	<p>** are listed in s.469</p> <p><u>Preliminary Hearing:</u> before a "Justice" (Provincial Court Judge) - Part XVIII</p> <p><u>Trial:</u> must be held before a Supreme Court Judge - Part XX - must be a jury trial unless both accused and Crown consent (ss 471 and 473)</p>
<p><u>Trial:</u> before a Provincial Court Judge - Part XIX</p>	<p>Provincial Court Judge</p>	<p>Judge without a Jury</p>	<p>Court composed of Judge and Jury</p>	<p><u>Trial:</u> before a Provincial Court Judge - Part XIX</p> <p><u>Preliminary Hearing:</u> before a "Justice" (Provincial Court Judge) - Part XVIII</p> <p><u>Trial:</u> before a Supreme Court Judge &amp; Jury - Part XX</p>
<p><u>Trial:</u> before a Provincial Court Judge - Part XIX</p>	<p>Provincial Court Judge</p>	<p>Judge without a Jury</p>	<p>Court composed of Judge and Jury</p>	<p><u>Trial:</u> before a Provincial Court Judge - Part XVIII</p> <p><u>Preliminary Hearing:</u> before a "Justice" (Provincial Court Judge) - Part XVIII</p> <p><u>Trial:</u> before a Supreme Court Judge &amp; Jury - Part XX</p>
<p><u>APPEAL:</u></p>	<p>Provincial Court Judge</p>	<p>Judge without a Jury</p>	<p>Court composed of Judge and Jury</p>	<p>• in all of the above cases, the appeal procedure is the same - to Court of Appeal on a question of law alone (as of right), on a question of fact or mixed law and fact (with leave), on sentence (with leave)</p> <p>• jurisdiction is described in ss 675, 676; procedure found in Part XXI</p> <p><b>FURTHER APPEAL:</b></p> <p>• to Supreme Court of Canada - ss 691 - 693</p>

Offences on which Crown has an option to proceed by Summary Conviction or Indictment:

1. If Crown opts to proceed by Summary Conviction, procedure is identical to column on left in all respects; or
2. If Crown opts to proceed by Indictment, procedure is identical to "Indictable Offences" above in all respects.