

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

FINAL EXAMINATION – APRIL 2020

LAW 221.001
Criminal Law and Procedure

Professor J. Benedet

EXAMSOFT PASSWORD:
EXAMSOFT RESUME CODE:

TOTAL MARKS: 100

WRITING TIME ALLOWED: 3 HOURS
PREPARATION TIME ALLOWED: 10 MINUTES

Preparation Time has been given to download/print/set up for your exam once the exam has been made available online through Canvas. This time cannot be used for writing exam answers. All exam answer uploads will be monitored to ensure that typing of answers only occurred for the allotted Writing Time.

This is an open book examination, meaning that you can refer to class notes, casebooks and other class readings. The use of library books is not permitted. You will need your *Pocket Criminal Code* to answer this exam.

Any exam answers that raise suspicion of breaking any restrictions outlined on this cover page may be subject to being processed through academic integrity software.

If you think you have discovered an error or potential error in a question on this exam, please make a realistic assumption, set out that assumption clearly in writing for your professor, and continue answering the question.

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Part A: Please answer ALL of the questions in Part A. This part is worth 60 marks and the recommended time for this part is 116 minutes (including 11 mins reading time)

Going Once, Going Twice

AA Auctions is a business located in New Westminster, BC, operated by Albus Armstrong. Albus holds auctions at which he sells off valuable estate antiques to the highest bidder. Albus decides to hold a special event where anyone can bring in items for a free appraisal and, if they choose, have them auctioned off that same day. Hundreds of people show up for the event and the line for the appraisers winds around the gymnasium at the local community centre.

Red Serge attends the appraisal with an old firearm given to him by his grandfather. His grandfather told him that the firearm had been used in the battle between the English and French on the Plains of Abraham in 1759. Red has no idea if this story is true but he believes that the gun is very old and inoperative.

Candy Grammer also attends the appraisal. She has brought a lamp with a stained glass shade. Candy is pretty sure that this lamp is worthless, since she bought it at a garage sale for five dollars. Ginger Ale is working as an appraiser at the event. She tells Candy that her lamp is an authentic Taffyneer lamp, and is worth as much as \$2000. In fact, Ginger is wrong, the lamp is a reproduction, and is worth not much more than Candy paid for it.

Red is very disappointed to learn that his gun is a rifle that dates from the 1930s and isn't valuable. He has been up all night working the graveyard shift, and has taken some amphetamines to stay awake for the appraisal. He decides to stay for the auction and relax for a while before going home. When Candy's lamp comes up for sale, Albus announces it to be an authentic Taffyneer and sets the opening bid at \$400. Red increases this to \$500, and keeps bidding against others in the audience until the bidding reaches \$1200. He expects someone else will outbid him, but no one does. Red has only brought \$80 and does not have \$1200 to pay for the lamp – he was just bidding as a joke.

Red knows he needs to avoid being asked to pay for the lamp. He pulls the fire alarm in order to cause a distraction. People push toward the exit. In the commotion that follows, Red deliberately knocks the lamp off the table and it breaks into several pieces. Red has left his gun unattended leaning against his chair, and Candy, angry at the destruction of her property, grabs the gun and points it at Red. Red, believing that the gun is inoperative, screams obscenities at Candy, and starts chanting – “go ahead, you ugly witch, shoot me.” Candy points the gun at Red and pulls the trigger, and the gun, which is operative, discharges a single shot. The shot misses Red and strikes Ginger in the armpit. The wound is minor, but Ginger faints from shock. Red runs away. Candy wanders into the parking lot, where she is found, shaking and pale, by police. She says she can remember nothing after Red started yelling at her.

Albus arrives, and knowing that Ginger has an addiction to pills, assumes she has overdosed. He administers an anti-overdose kit that he finds in Ginger's bag. Unfortunately, what Albus injects is actually Ginger's insulin for her type 1 diabetes. The amount injected causes a fatal reaction and she dies on the way to the hospital in the ambulance.

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

- A1.** Candy is charged with the murder of Ginger contrary to s. 229(b) of the *Criminal Code*. You are the Crown prosecuting this charge. Outline your case and evaluate the likelihood of conviction. Be sure to consider any arguments you expect the defence to raise on Candy's behalf. (30 marks)(55 minutes)
- A2.** Red is charged with unauthorized possession of a firearm contrary to s. 91(1)(a) of the *Criminal Code*. You are Red's defence lawyer. He tells you that while he does not have a firearms licence, he didn't think he needed one for an antique gun. What will you argue on his behalf? Will he be convicted? (15 marks)(25 minutes)
- A3.** Red is also charged with obtaining property by false pretences in relation to his auction bid, contrary to s. 362(1)(a). Red tells you, his lawyer, that he should not be convicted because he is really the victim here, since the lamp was a fake and he was only joking. Is he right? (Ignore the fact that the lamp is broken for the purposes of this question.) (15 marks) (25 minutes)

Part B: Answer 2 of the 3 questions in Part B. Do not answer all 3 questions. Identify whether the following statements are TRUE, FALSE, or NOT SETTLED LAW and explain your answer. This Part is worth 20 marks and the recommended time for this Part is 32 minutes.

- B1.** The more violent the offence, the less impact that s. 718.2(e) will have on the sentence of an Aboriginal (Indigenous) offender.
- B2.** The maximum sentence is reserved for the worst offence and the worst offender.
- B3.** Section 7 of the *Charter* may expand the defences available to accused persons.

Part C: Answer 1 of the 2 questions in Part C. Do not answer both questions. This Part is worth 20 marks and the recommended time for this Part is 32 minutes.

- C1.** Canada's criminal law often declines to hold people accountable for doing nothing in the face of wrongdoing by others. Give some examples of this tendency, and discuss whether the law has struck the right balance on this question.
- C2.** In what circumstances is Canadian criminal law prepared to punish people for their actions even when they did not subjectively intend them? Are the justifications for these departures from the presumption of subjective fault convincing?

END OF EXAMINATION