

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

FINAL EXAMINATION – APRIL 2020

LAW 221.003  
Criminal Law and Procedure

Professor Perrin

**EXAMSOFT PASSWORD:**  
**EXAMSOFT RESUME CODE:**

**TOTAL MARKS: 100**

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

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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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**THIS EXAMINATION CONSISTS OF 3 QUESTIONS****MARKS****60 QUESTION #1: Fact Pattern**

Mallory is a 60-year-old widower who lives with his four sons: Rue (24 years of age), Patrice (21 years of age), Dan (21 years of age), and Joe (17 years of age). They all live together in a cabin in a remote forested area 50 kilometers east of Fort Nelson, BC.

Mallory made no secret that Joe was his favorite son and he often gave him special gifts. Joe would frequently report to his father Mallory about the bad things his brothers had done, including being cruel to forest animals, getting drunk in the woods, and leaving their hunting rifles outside in the elements. Joe's brothers believed Mallory was planning on meeting with a lawyer soon to make a will leaving all of his estate to Joe.

On January 18, 2020, Joe told Mallory that Rue, Patrice and Dan had been shooting squirrels for sport and leaving those that were shot, but not killed, to suffer. Mallory was furious at Rue, Patrice and Dan.

On January 19, 2020, Rue, Patrice and Dan were out hunting together. They began discussing what to do about their younger brother Joe. They agreed that it was time to "teach Joe a lesson" and "put him in his place" in a way that he "wouldn't forget". Patrice told Rue and Dan to lure Joe out the following day to the family's hunting blind and "leave the details to me".

The next day, on January 20, 2020, Rue and Dan invited Joe hunting. Suspicious, Joe refused. But Rue and Dan persisted. Joe went with Rue and Dan to the family's hunting blind. When they arrived, Rue and Dan began drinking heavily. Three hours later, Rue and Dan were having a hard time standing up due to being drunk, and were laughing and falling over. At that time, Patrice quietly arrived, snuck up behind Joe, and put a plastic bag over Joe's head. Patrice then tied a rope around Joe's neck to keep the plastic bag in place.

"That'll teach him," said Dan. "Yeah, you tattle tale," said Rue.

Patrice tied Joe's hands behind his back, and kicked Joe's feet out so that he fell to the ground.

"I can't breathe!" said Joe in a panicked voice.

"Shut up, you had lots of breath to tell Dad everything we do," said Patrice.

"I don't wanna see nothing, I'm outta here," said Dan as he left.

"Maybe you better take the bag off a little," said Rue to Patrice.

"You're too soft Rue, he's gotta get put in his place and learn, so he don't forget," said Patrice.

“Listen, you’re gonna kill him. Why don’t we just take the bag off now and leave him tied up good out here overnight,” said Rue. Rue planned on returning in an hour or so to rescue Joe because he thought Patrice had gone too far, but didn’t want Patrice to think he was weak.

“Fine,” said Patrice, taking off the plastic bag as Joe gasped for air. Patrice tightened the ropes around Joe’s hands and tied him to a tree.

Patrice and Rue then left to head back to their cabin. Rue resumed drinking and Patrice started drinking as well. They both passed out before reaching their cabin. Rue awoke in the dark in the middle of the forest at 3 am. He had no light and wandered in the woods until daybreak looking for Joe, but became hopelessly lost.

By 7 am when Mallory awoke and found none of his sons were home, he called the RCMP. They began a search and found Rue, Patrice, and Dan in separate places, each alone and lost in the woods, and each smelling heavily of alcohol. By 2:30 pm, the RCMP found Joe tied by his hands and bound to a tree near the family’s hunting blind. He was deceased. The coroner’s report found that he had died from hypothermia. The overnight temperature had reached a low of minus 27 degrees Celsius.

**The RCMP is recommending that Rue, Patrice, and Dan each be charged with first degree murder under s. 231(5), and forcible confinement under s. 279(2)(a) of the *Criminal Code*.**

**You are a summer law student to the Crown Prosecutor in this case. She has asked you to prepare a memorandum providing your legal analysis and opinion on which of the charges recommended by the RCMP (including any of their lesser and included charges), if any, should be laid in relation to Rue, Patrice and Dan, and why. Your answer should cite relevant legal authorities.**

#### RELEVANT PROVISIONS

*Criminal Code*, R.S.C., 1985, c. C-46

**231 (5)** Irrespective of whether a murder is planned and deliberate on the part of any person, murder is first degree murder in respect of a person when the death is caused by that person while committing or attempting to commit an offence under one of the following sections:

- (a) section 76 (hijacking an aircraft);
- (b) section 271 (sexual assault);
- (c) section 272 (sexual assault with a weapon, threats to a third party or causing bodily harm);
- (d) section 273 (aggravated sexual assault);
- (e) section 279 (kidnapping and forcible confinement); or
- (f) section 279.1 (hostage taking).

\* \* \* \* \*

**Forcible confinement**

**279 (2)** Every one who, without lawful authority, confines, imprisons or forcibly seizes another person is guilty of

- (a) an indictable offence and liable to imprisonment for a term not exceeding ten years;  
or
- (b) an offence punishable on summary conviction.

**MARKS****20 QUESTION #2: Development of the Law**

Identify and describe five major ways that the *Canadian Charter of Rights and Freedoms* has changed the criminal law in Canada as covered in our course. Justify your answer and cite relevant legal authorities. (A reminder that the material in Unit 7 on Sentencing is not examinable, so please do not refer to it in your answer).

**20 QUESTION #3: Policy**

You are a summer law student working for a criminal defence lawyer who is also President of the Canadian Criminal Defence Lawyers Association. She will be appearing as a witness next month before a Parliamentary committee that is studying “defences”.

Prepare a memorandum for her recommending three amendments that Parliament should make to the *Criminal Code* related to grounds for excluding criminal liability (also known as “defences”, which includes NCR or “not criminally responsible on account of mental disorder”). Justify your answer and cite relevant legal authorities.

**END OF EXAMINATION**