

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

FINAL EXAMINATION – APRIL 2020

LAW 476.002  
Evidence

Professor Nikos Harris

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

**TOTAL MARKS: 100**

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

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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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**Question 1 (50 Marks)**

Alan Accused is charged with attempting to murder Vince Victim by knifing him in the chest. The Crown and defence have formally admitted that Victim was found on a street with a knife wound to his chest on January 20, 2019. The trial is taking place on January 20, 2020. The only Crown witness is Vince Victim who testified at trial as follows:

On January 20, 2019, I was walking down the street and I saw a person coming towards me very quickly and he stabbed me in the chest with a knife and then ran off. I recognized him as Alan Accused, a person that I sometimes played hockey against in the Kits Community Hockey League which operates on Thursday evenings. A couple of weeks before the stabbing, I was playing against Accused in the League and my team was winning by a large margin. Accused is not a very good player and I kept taking the puck off him. After stealing the puck from him once again near the end of the game, Accused hit me in the head with his hockey stick, and my helmet broke into two pieces. While I was leaning over to pick up the pieces of my helmet, Accused said to me, "you will pay an even bigger price later for embarrassing me". Two weeks after this incident, Accused came up to me on the street and stabbed me in the chest.

The defence cross-examined Victim and suggested to him that he had misidentified the person who attacked him at the game and then later stabbed him. It was suggested to Victim that the person who attacked him at the game and later stabbed him looked somewhat like Accused but was taller than Accused. Victim disagreed with the defence suggestions.

The defence was planning to call Roger Referee as a witness. Referee heard about the charge and went to the office of Accused's defence lawyer on January 15, 2020 and said he had information that might help his good friend Accused. An administrator in the law office video-recorded Referee providing the following statement:

I referee community hockey games, and I have been the referee for all Thursday night games at the Kits Community Hockey League for the past two years. Accused and Victim both sometimes play in those games. Accused is a very skilled player who could play on a professional team, while Victim has limited skills and could never play on a professional level. There is no way that Victim could ever steal a puck from Accused. Accused is also known as a very unaggressive person among the League players, and once I saw Accused not even react when another player slashed his leg. Further, I never remember seeing any incident where Victim's helmet was broken into two pieces by anyone.

There is another player, Jake Jar, who comes to some of the Thursday night games, and he looks a lot like Accused but is taller. Jar is a beginner player and I have seen him be very aggressive in the games. I remember one game, 18 months ago, where a goalie saved a good shot from Jar, and Jar started hitting the goalie repeatedly with his stick.

Referee was called as a defence witness in the trial and was put under oath. Referee then suddenly collapsed on the stand due to a heart attack and died. The Court later reconvened and the defence is making an application to have Referee's video statement admitted as hearsay evidence.

**Do you think Referee's video statement will be admitted as hearsay evidence? Please provide your reasons why or why not.**

**Question 2 (30 Marks)**

Peter Pall is charged with the murder of Ross Rival. Pall is alleged to be a gang member who killed Rival, a member of another gang, in a dispute over drug territory. Pall has a criminal record for two assaults, one two years ago which arose out of a dispute in a coffee shop about who was in line first, and the other from the domestic abuse of his partner four years ago. The main Crown witness is Willy Witness who says he is a member of the same gang as Pall, and says he was present when Pall shot Rival. Witness was originally charged with Rival's murder because his hand print was found at the scene of the killing, but the charge was later dropped when Witness made a statement to the police that it was Pall who did the killing and that he had no prior knowledge that Pall was going to kill Rival. Witness has a criminal record for a series of assaults and an attempted murder.

The rest of the evidence being called by the Crown in the case against Pall indicates that the crime scene matches Witness's description of how the killing took place.

- 1. Do you think that the offences in Pall's criminal record will likely be admissible in Pall's trial, and is there anything the defence can do to diminish the chances of them being admissible or to limit the reference that can be made to Pall's prior offences? (20 Marks)**
- 2. From the information provided, do you think it will be possible, and safe, for a trier of fact to convict Pall of the murder? (10 Marks)**

**Question 3 (10 Marks)**

**Comment on the accuracy of the following statement:**

**Evidence of an accused's conduct after an offence is only admissible to establish that the accused had some involvement in the crime, and cannot assist in determining the culpability of the accused.**

**Question 4 (10 Marks)**

**Comment on the accuracy of the following statement:**

**Where the defence is aware of multiple witnesses who would testify that the accused was not present at the scene of the crime, the defence can call all of these witnesses at trial, or can call some of them as witnesses at trial, and then have the evidence of the other witnesses admitted as fresh evidence on appeal if the accused is convicted.**

**END OF EXAMINATION**