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THIS EXAMINATION CONSISTS OF 3 PAGES (INCLUDING THIS PAGE)
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THE UNIVERSITY OF BRITISH COLUMBIA
PETER A. ALLARD SCHOOL OF LAW

MID-TERM EXAMINATION – DECEMBER 2019

LAW 221
Criminal Law & Procedure

Section 3
Professor Benjamin Perrin

TOTAL MARKS: 100

TIME ALLOWED: 1 HOUR
and 15 minutes reading time

NOTE: This is an open book examination, meaning that you can refer to the course materials (including annotated *Criminal Code*) and your notes. Other books or materials are not permitted.

THIS EXAMINATION CONSISTS OF 1 QUESTION

QUESTION – “Serenity Now”

Egbert Stewart is a 75-year-old retiree who owns and lives at an ocean-front property near Porpoise Bay Provincial Park on the Sunshine Coast, near the town of Sechelt, British Columbia. In the last decade, the traditionally quiet area that is popular with scuba divers and kayakers has seen a substantial increase in motor-boat as well as Jet Ski and See-Doo personal watercraft traffic.

Every summer since August 2010, Stewart has posted the following notice up in the area: “KEEP PORPOISE BAY SERENE! Motor-boats, Jet Skis and See-Doos are destroying the peace and quiet of our beautiful ocean inlet. You are not welcome. Take your loud and disruptive powered watercraft to the Okanagan instead!”

Since 2013, Brad Dardev has been coming from Vancouver to visit the Porpoise Bay Provincial Park area with his friends to Jet Ski every few months. In May 2014, Dardev was driving his Jet Ski at a high rate of speed near Stewart’s oceanfront property when it became entangled in a fishing net. The Jet Ski had to be towed back to the boat launch. Since no fishing is allowed in the area, there was an investigation by the BC Wildlife Service. It found Stewart put the fishing net out in the water. He was given a warning and the RCMP were also informed.

In July 2015, the District of Sechelt passed a bylaw prohibiting the launch into the inlet of any Jet Ski, See-Doo, or other personal watercraft that can travel faster than 16 nautical miles/hour (30 km/hr). A Jet Ski can reach a maximum speed of 100 km/hr. The bylaw is not actively enforced, but there is signage about the restriction at every boat launch in the inlet and on all roads leading into the area.

In May 2016, Dardev was again operating his Jet Ski at a high rate of speed near Stewart’s oceanfront property when it collided with an almost fully submerged 8-foot-long log (2.4 metres long). Dardev was flung from his Jet Ski into the water and his body was later found by a kayaker. Transport Canada regulations require all watercraft to have a lifejacket or personal flotation device (PFD) for each occupant, but the regulations do not require they be worn.

The coroner’s report found that Dardev drowned. He was heavily intoxicated with alcohol and cannabis (a controlled substance that was still criminal to possess at the time) at the time he drowned. He had some bruising on his arms and a small gash on his forehead, but those were not considered to be life threatening. The coroner’s report also concluded: “The combination of the impact with the water, cold water, lack of a lifejacket or PFD, and intoxication all contributed to Dardev’s inability to swim to safety so he drowned. A life jacket or PFD would have provided not only buoyancy but also thermal protection had it been worn.”

The Jet Ski owner’s manual reads, in part: “All riders must wear a Coast Guard approved personal flotation device (PFD) that is suitable for personal watercraft

(PWC) use. Kawasaki recommends a vest-type PFD. Hard impact with the water can result in loss of consciousness and drowning.”

An RCMP investigation found evidence of the above facts and that Stewart had been heaving logs into the inlet waters from his dock every few weeks between April and May 2016. Stewart pleaded guilty on June 1, 2016 to illegally dumping logs into the inlet, a provincial regulatory offence, and paid a \$1,000 fine.

On May 9, 2017, Stewart was charged with criminal negligence causing death, contrary to section 220 of the *Criminal Code*, in relation to Dardev’s death. The case is set for a 4-week trial in BC Supreme Court starting January 9, 2020.

You are a summer law student working for Stewart’s defence counsel. She has asked you to write a memorandum analyzing the strength of the Crown’s case against the accused and recommend a strategy for defending the accused on the charge of criminal negligence causing death, contrary to Section 220 of the *Criminal Code*. Your memorandum should cite all relevant legal authorities.

STATUTORY PROVISIONS

Criminal negligence

219(1) Every one is criminally negligent who

- (a) in doing anything, or
- (b) in omitting to do anything that it is his duty to do,

shows wanton or reckless disregard for the lives or safety of other persons.

Definition of *duty*

(2) For the purposes of this section, *duty* means a duty imposed by law.

Causing death by criminal negligence

220 Every person who by criminal negligence causes death to another person is guilty of an indictable offence and liable

- (a) where a firearm is used in the commission of the offence, to imprisonment for life and to a minimum punishment of imprisonment for a term of four years; and
- (b) in any other case, to imprisonment for life.

END OF EXAMINATION