

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

**THIS EXAMINATION CONSISTS OF 4 PAGES (INCLUDING THIS PAGE)
PLEASE ENSURE THAT YOU HAVE A
COMPLETE PAPER**

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

FINAL EXAMINATION - FALL 2019

**LAW 400
ADVANCED CRIMINAL PROCEDURE**

**Section 1
Professor Harris**

TOTAL MARKS: 100

**TIME ALLOWED: 2.5 HOURS and 15 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 is charged with the following offence:

Alan Accused, on or about the 30th day of August, 2019 in the city of Vancouver, in the province of British Columbia, did commit assault using a weapon, namely a handgun, contrary to section 267(a) of the *Criminal Code*.

Accused was attending a football game in Vancouver, B.C. on August 30th, 2019 and he was in a long line up to enter the stadium. Vince Victim was collecting tickets from persons entering the stadium and was taking a long time because he was feeling very sick that day. A number of people in the line got very annoyed, and eventually Accused was at the front of the line and there were five persons behind him. These witnesses in the line behind Accused say that when Accused got the front of the line he started hitting Victim repeatedly in the head. Two of the witnesses who were at the back of the line say that Accused was holding a handgun and was hitting Victim with the handle of the gun. Two witnesses who were closer to the front of the line say that Accused was using brass knuckles, and not a handgun, to hit Victim. One witness nearest to the front of the line says that Accused hit Victim with a closed fist and Accused did not appear to have anything in his hands and smelled of beer. All these witnesses in the line say that Accused ran away after the incident.

Victim has a fractured skull and a serious concussion from the attack. Victim did not see the face of the attacker but thinks the attacker was short, and Accused is quite tall.

The police came to the stadium minutes after the incident, interviewed Victim and the witnesses from the line, and then arrested Accused for assault with a weapon when they found him 10 blocks from the stadium. The police searched Accused and only found a wallet and a cellular phone in his pockets. The police looked at the texts on the phone for five minutes and saw that Accused had just sent a message to a friend saying that he had “stashed something away”. The police searched that area between the stadium and where they arrested Accused but could not find anything.

Accused is 38 years of age and was born and raised in Vancouver, B.C. He is a successful actor and has worked on a number of films shot in Vancouver and Los Angeles. His parents now live in California and his sister, who is a high school principal, lives in Vancouver. Accused was convicted of drunk driving in Vancouver five years ago which resulted in a one year driver’s licence suspension. Six months after that conviction, the police caught Accused driving and Accused appeared to again be intoxicated. Accused agreed to plead guilty to the offence of driving while his licence was suspended, and he received a one month jail term. Accused credits this jail time with getting him to turn his life around and stop drinking alcohol.

(Question 1 continued)

The Crown is proceeding by Indictment, and the Accused has elected to be tried in Provincial Court. The trial is scheduled to take place 9 months from the date of the charge. Accused's position is that it was somebody else who attacked Victim and that he ran away from the incident because he was scared the attacker might go after him next.

Please analyze whether or not you think Accused will be granted bail. Please also set out what types of bail conditions a court might impose if bail is granted. Please assume that a handgun and brass knuckles come within the definition of "weapon" in the *Criminal Code*.

Question 2 (30 Marks)

Jake Jar was charged on January 5, 2017 with a bank robbery and is being tried in British Columbia Supreme Court by a judge and jury. Jar received bail, but because he has a significant criminal record he has strict conditions which include a curfew and contacting his bail supervisor every day. The trial date is set for January 5, 2019.

Soon after the charge, Jar's defence counsel received disclosure from the Crown which contained a video and one witness statement. The video tape showed a person wearing a "Batman" face mask robbing the bank of \$10 000. The video shows that the robber is very tall, and Jar is very tall. The witness statement was from a car salesperson who says that a few days after the robbery Jar came to his dealership, which is near the bank, and paid for a car with \$9500 in cash. The salesperson asked Jar where he got the cash from, and Jar said that he recently got the money but that it would not be a good idea to tell people where it came from.

The police also took a statement from Willy Witness. Willy Witness says that he saw the video of the robbery on a news program and noted that the robber seemed to be very tall like his former high school classmate Jake Jar. Witness then remembered that a few days before the robbery he saw Jar going into a costume store, and Witness said he knows that this store sells Batman masks. Witness contacted the police a few days after the robbery and they took a statement from him which was placed in the investigative file.

A month before the trial date, Crown counsel sent the statement from Willy Witness to Jar's defence counsel. Crown counsel in a letter to defence counsel said he did not send this statement to the defence with the other disclosure because he was not sure if he was going to call Willy Witness at the trial, and now that he had decided to call Willy Witness at trial he was sending the defence the statement. Jar's defence counsel has a fraud trial for another client which starts the day after she received the Witness statement and letter, and the fraud trial will end week before Jar's trial date.

(Question 2 continued)

What motion or motions might Jar's defence counsel bring in response to the disclosure of the statement from Witness, what remedies should be defence seek, and do you think the defence will be successful? Also what positions might the Crown consider taking in any defence motions relating to the Witness statement?

Question 3 (20 Marks)

Please comment on the accuracy of the following statement:

The ability of the police to conduct a search of a person, and the ability of the police to conduct a search of a place such as a home, have similar legal thresholds and requirements.

END OF EXAMINATION

ADVANCED CRIMINAL PROCEDURE 400.001 COURSE OUTLINE – 2019 FALL SEMESTER

Professor Nikos Harris
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Office: Room 344

Required Materials

Case Book (e-mailed to students)
Rodrigues *Pocket Criminal Code* (2018 or 2019) or other 2018 or 2019 Unannotated *Criminal Code*

Recommended Text

Stuart et. al. *Learning Canadian Criminal Procedure*, Carswell, 10th edition

Introduction to Course

A just society cannot exist without fair rules of criminal procedure. Procedural rules engage fundamentally important aspects of our criminal justice system, including whether or not an accused is charged, what the Crown must prove at trial, the forum in which the trial occurs, and how an accused appeals a conviction. The rules of procedure also speak to critical broader issues in our society, including when the state should be permitted to intrude on an individual's privacy, whether an accused should have his or her liberty restricted after a charge, and how improper procedures can lead to wrongful convictions. A continuing theme running through the different topics in the course is the attempt to balance the right an accused person to fair criminal procedures with the right of the state to be reasonably able to detect and prosecute criminal conduct.

Learning Objectives

This term we will analyze various key procedural issues which arise during the course of a typical proceeding, including:

- the standard used for charge approval, and how it can be challenged;
- how to analyze a charging sheet to extract the essential elements of the offence;
- the rules for key pretrial motions, including bail and severance;
- the rules for determining the forum of trial;
- the differing roles of the judge and jury at trial; and,
- the rules concerning what an accused can appeal.

PRE-TRIAL

Week I

Charge Approval

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-charge-assessment-guidelines.pdf>

R. v. Nixon

R. v. Malik, Bagri and Reyat

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

R. v. Parsons

R. v. St-Cloud

R. v. Nadeau

R. v. Tunney

R. v. Manasseri

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

Week IV

Appointing Counsel

R. v. Tremblay

R. v. Crtichton

Disclosure Timing

R. v. Baxter

Charter, section 7

Week V

Disclosure Remedies and Scope

R. v. Bjelland

R. v. McNeil

Severance

R. v. Suzack

Criminal Code section 591

Week VI

Severance

R. v. McEwan

R. v. Last

Criminal Code sections 589

Rulings

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

R. v. Sipes

R. v. Vukelich

R. v. Bains

Week VII/VIII

Powers of Search and Arrest

R. v. Amare

R. v. Pope

R. v. Mann

R. v. Fearon

Hunter v. Southam

R. v. Wilson

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

Fact Patterns 1 and 2

Weeks VIX-X

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

Juror Selection and Bias Against Indigenous Accused and Victims

R. v. Williams

R. v. Rogers

Criminal Code sections 633, 634

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-XIII

Powers of Appellate Court

Criminal Code sections 675-678, 683, 686, 812, 813

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

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) & (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>** Accused may elect one of three modes of trial, as described in s.536(2)</p> <table border="1"> <tr> <td data-bbox="544 1207 738 1449"> <p>Provincial Court Judge</p> <p><u>Trial:</u> before a Provincial Court Judge - Part XIX</p> </td> <td data-bbox="544 955 738 1207"> <p>Judge without a Jury</p> <p><u>Preliminary Hearing:</u> before a "Justice" (Provincial Court Judge) - Part XVIII</p> <p><u>Trial:</u> before a Supreme Court Judge - Part XIX</p> </td> <td data-bbox="544 703 738 955"> <p>Court composed of Judge and Jury</p> <p><u>Preliminary Hearing:</u> before a "Justice" (Provincial Court Judge) - Part XVIII</p> <p><u>Trial:</u> before a Supreme Court Judge - Part XX</p> </td> </tr> </table>	<p>Provincial Court Judge</p> <p><u>Trial:</u> before a Provincial Court Judge - Part XIX</p>	<p>Judge without a Jury</p> <p><u>Preliminary Hearing:</u> before a "Justice" (Provincial Court Judge) - Part XVIII</p> <p><u>Trial:</u> before a Supreme Court Judge - Part XIX</p>	<p>Court composed of Judge and Jury</p> <p><u>Preliminary Hearing:</u> before a "Justice" (Provincial Court Judge) - Part XVIII</p> <p><u>Trial:</u> before a Supreme Court Judge - Part XX</p>	<p>Which can only be tried by a Superior Court of Criminal Jurisdiction</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>** 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>Provincial Court Judge</p> <p><u>Trial:</u> before a Provincial Court Judge - Part XIX</p>	<p>Judge without a Jury</p> <p><u>Preliminary Hearing:</u> before a "Justice" (Provincial Court Judge) - Part XVIII</p> <p><u>Trial:</u> before a Supreme Court Judge - Part XIX</p>	<p>Court composed of Judge and Jury</p> <p><u>Preliminary Hearing:</u> before a "Justice" (Provincial Court Judge) - Part XVIII</p> <p><u>Trial:</u> before a Supreme Court Judge - Part XX</p>					
	<p>APPEAL:</p> <ul style="list-style-type: none"> 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) jurisdiction is described in ss 675, 676; procedure found in Part XXI <p>FURTHER APPEAL:</p> <ul style="list-style-type: none"> to Supreme Court of Canada - ss 691 - 693 						

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

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