

**Write Your Exam Code Here: \_\_\_\_\_**

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**THIS TEST CONSISTS OF 7 PAGES (INCLUDING THIS PAGE)  
PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER**

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

**FINAL EXAMINATION – DECEMBER 2019**

**LAW 476/507  
(Evidence)**

**Section 001  
Emma Cunliffe**

**MARKS: 100**

**TIME ALLOWED: 3.0 HOURS  
(INCLUDING READING TIME)**

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**NOTES:**

1. This is a limited open book examination. You may only bring the required materials (Stewart et al Casebook, materials posted on connect), your own notes, CANS prepared yourself or with others enrolled this term in this course and an English dictionary into the examination room. Use of library books or other texts is prohibited during the examination.
2. Please answer all questions, giving reasons for your answer. If you need additional facts to answer a question, identify the missing facts and state why they are necessary.
3. Question 1 is worth 60 marks, and is divided into two parts, each of which is worth 30 marks. Question 2 is worth 40 marks.

(Notes continued)

4. Suggested times are given for each question, and for general reading. The times have been allocated as follows:

Total time allocated to questions:	160 minutes
Suggested reading time:	20 minutes
<b>Total</b>	<b>180 minutes</b>

**THIS EXAMINATION CONSISTS OF THREE QUESTIONS.  
PLEASE CHECK THAT YOU HAVE A COMPLETE EXAMINATION.**

MARKS

- 60 1. You are the trial judge, sitting with a jury in the case of *R v Alpre*. Mr Arnold Alpre is charged with first degree murder in the death of Vince Violet. Mr Violet was killed early in the morning of September 27, 2018 by gunfire. The crime occurred at an all-night diner at around 2:00am. Video footage of the incident shows that the shooter was wearing jeans, a hoodie, and a Donald Trump mask. No gun or trace forensic evidence that could identify the shooter was ever retrieved.

At the time of his death, Violet was having dinner with a friend, Riley Everett. Mr Everett was killed by shooting in March 2019.

**30 (a) (Suggested time: 48 minutes)**

The Crown wishes to call evidence from Mr Delly Hanky. Mr Hanky is a clinical podiatrist who will testify that he has developed a technique called forensic gait analysis by which it is possible to identify people from CCTV even if their face is obscured. The defence objects to the admissibility of Mr Hanky's evidence.

On *voir dire*, you have heard the following testimony from Mr Hanky:

'I hold a Masters degree in human kinetics from the University of Buckingham in England. My Masters was conferred in 2009. In that project, I developed a method for identifying individuals based on their movement patterns, particularly their gait. Gait refers to the way in which a person walks or runs.

My Masters work was supervised by Dr Anson Vriend, who pioneered a new method of video-based gait analysis for clinical podiatry. Dr Vriend's work has been published in scientific peer-reviewed journals and widely adopted in clinical podiatric practice in Europe and North America. In my Masters project, I applied the basic premises of Dr Vriend's techniques to the new field of forensic identification. In forensic identification applications, the analyst is invited to compare video footage of a known person walking or running against footage of an unknown suspect or perpetrator. For example, in this case, I compared the footage taken from the all-night diner where the shooting occurred against footage of Mr Alpre which was covertly obtained in the police detachment after his arrest.

In the footage taken at the crime scene, the perpetrator can be seen walking into the diner, shooting Mr Violet, and then running out the door. The total period of time in

which the perpetrator is shown is approximately 9 seconds, which includes approximately 10 metres of walking and 10 metres of running. At some moments, the perpetrator's gait is obscured by the booths at which customers sit.

In the footage taken at the police detachment, Mr Alpre is depicted walking down a corridor while handcuffed. This footage is taken from behind Mr Alpre, and therefore is the same angle as that shown in the crime scene footage when the perpetrator runs away. I would estimate that Mr Alpre walks approximately 20 metres in the police footage.

Using my adaptation of the techniques originally developed by Dr Vriend, I am able to identify common features of gait as between the footage of the perpetrator and that of Mr Alpre. In both instances, the person depicted has over-pronation, a condition which affects approximately 20% of the population. The person depicted in both sets of footage also has an outward turning left foot, while the right foot points forward naturally. This is a much rarer movement pattern, which I would estimate affects no more than 5% of the population. In addition, the height and build of the person depicted in both sets of footage appears to be very similar.'

On cross-examination, Mr Hanky agreed with defence counsel that he had not published his Masters' work or otherwise had this adaptation of clinical techniques peer-reviewed. Mr Hanky has had no training in forensic science or the dangers of wrongful conviction, but testified that 'I am very careful to ensure that I am very certain about what I have observed before I will provide an opinion.' Mr Hanky also agreed that in clinical podiatry, it is possible to manipulate video angles, ensure clarity of footage, and direct movement to capture features of interest, whereas when one is working with footage that has been covertly captured, one must necessarily work with footage of lower quality. However, he testified that the care with which he makes his observations, including spending many hours poring over these few seconds of footage, enables him to compensate for these constraints. Mr Hanky testified that he does not have an error rate for his technique, and has not studied whether different analysts consistently observe the same features in the same footage.

Defence counsel has submitted to you that Mr Hanky has not demonstrated that he possesses any expertise beyond that which could be obtained by a careful juror who watched the footage several times, and that he has not demonstrated that his evidence is sufficiently reliable to counter the dangers of wrongful conviction that have been associated with expert evidence. Defence counsel submits that Mr Hanky's evidence is completely inadmissible. Crown counsel submits that Mr Hanky has demonstrated that his techniques are systematic and grounded in peer-reviewed techniques. She

submits that it is possible to minimise any dangers of deferral to expert witnesses through careful judicial instruction.

**Write your judgment regarding the admissibility of Mr Hanky's evidence. Ensure that you identify and apply relevant case law and explain the reasons for your decision.**

### MARKS

**30 (b) (Suggested time: 48 minutes)**

The Crown has made an application to introduce hearsay evidence via testimony from Constable Crowe of the Vancouver Police Department. Constable Crowe was one of the first police responders to the 911 call made by staff at the diner when the shooting happened. He arrived within 3 minutes of the shooting. When Constable Crowe arrived at the diner, Violet's friend and dinner companion Mr Riley Everett was extremely angry. Constable Crowe has testified that Mr Everett 'lost control' and was 'trashing the diner', requiring Constable Crowe to arrest and handcuff Mr Everett to subdue him. After being handcuffed and led to a police cruiser, Mr Everett was 'quite agitated and very upset', but more in control. Constable Crowe testified that Mr Everett was not obviously under the influence of drugs or alcohol, but was reacting strongly to having witnessed his friend's death by shooting.

Within ten minutes of the shooting, while sitting in the police cruiser, Mr Everett told Constable Crowe that after the shooter had run out of the diner, that person got into the passenger side of a 'brown/grey Cadillac or Lincoln'. Constable Crowe made a note of this description in his police notebook. Mr Everett also supplied other information about the shooter, including that the shooter was wearing a Donald Trump mask, grey hoodie and black jeans. This information was subsequently corroborated by the video footage obtained from a security camera inside the diner.

Seven hours later, at the police detachment, Mr Everett described the getaway car to Mr Everett as a 'decent, not cheap', 'late model Cadillac or Lincoln' with four doors and blue headlights. This statement was video-recorded, but Mr Everett was not given any police warnings as he was not then under suspicion in relation to any crime.

Police undertook an extensive search for registered late model Lincolns and Cadillacs with four doors in brown/grey. This search revealed one such car, a grey Lincoln, registered to Budget Car Rentals at Vancouver Airport. Budget's records show that this vehicle was rented to Mr Alpre from September 6 – October 2, 2018. Subsequent inspection of the vehicle by crime scene investigators failed to find any trace of blood or other forensic evidence. The vehicle was equipped with high intensity discharge headlights that produced bright white light.

One year after Mr Violet's death, Mr Everett was shot and killed. Other evidence suggests that Mr Violet and Mr Everett were mutually involved in drug trafficking, and that they were both likely killed in the course of a gang rivalry. In the statement Mr Everett gave at the police detachment seven hours after Mr Violet had died, he denied that he or Violet had any involvement in drugs or organized crime.

**Write your ruling on the admissibility of the two statements made by Everett after the shooting. (30 marks)**

QUESTION 2 ON NEXT PAGE

MARKS

40    2.    **(Suggested time 64 minutes)**

Write a critical analysis of one of the cases that we have studied this year (this critical analysis must focus on a case extracted in the casebook and assigned for reading, or posted on the course website).

**END OF EXAMINATION**