

Write Your Exam Code Here: _____

Return this exam question paper to your invigilator at the end of the exam before you leave the classroom.

THIS EXAMINATION CONSISTS OF 6 PAGES (INCLUDING THIS PAGE)
PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER

THE UNIVERSITY OF BRITISH COLUMBIA
Peter A. Allard School of Law

FINAL EXAMINATION – DECEMBER 2019

LAW 525.001
Canadian Criminal Law & Procedure

Adjunct Professor P. Mann

TOTAL MARKS: 100

TIME ALLOWED: THREE (3) HOURS

THIS EXAMINATION CONSISTS OF TWO (2) PARTS.

ANSWER ALL FOUR (4) QUESTIONS IN PART I – FACT PATTERN
CHOOSE TWO (2) OF FOUR (4) QUESTIONS IN PART II – SHORT ANSWER.

Special Instructions:

Candidates are permitted to bring SIX (6) pages of typed and/or handwritten notes into the exam with them. The pages must be 8.5 x 11 inches in size (standard letter) and the notes may fill both sides of the pages.

Candidates are permitted to bring in ONE (1) unmarked English (non-legal) pocket-book dictionary.

Laptops are only permitted for the use of ExamSoft. Candidates should ensure that their phones (and any other electronic devices) are turned off. No other materials are permitted.

Read the questions carefully and understand what you are being asked to do before you begin your answer. Support your answers by referring to relevant common law/case law and/or statutory authority where appropriate. If you need more facts to reach a more definitive conclusion, please indicate what those facts might be.

At the end of this examination, you must return this exam cover sheet with your UBC Student Number identified on the first page. Examination Booklets and ExamSoft submissions should also be identified by your Exam Cod

PART I – TOTAL: 70 MARKS

ANSWER ALL FOUR (4) QUESTIONS

SUGGESTED TIME: 90 MINUTES

The accused Bobby was “partying” at his friend Donny’s house located in White Rock, BC. Over the course of an hour, Bobby and his friend Donny consumed several (at least five or six bottles of) beer and smoked a few cannabis marihuana cigarettes which they had shared between each other. This was Donny’s first time consuming cannabis marihuana. During this time, Bobby and Donny jointly decided to attend the local convenience store, known as “Mann’s Convenience Store” and left immediately by foot.

After a ten minute walk, Bobby and Donny arrived at Mann’s Convenience Store. Bobby realized that he did not have any money as forgot to bring his wallet with him. Donny did not bring any money as he was not expecting to buy anything. Bobby decided to steal a bag of potato chips. He told Donny about his plan to steal a bag of potato chips and asked to borrow Donny’s cigarette lighter. Donny did not understand why Bobby needed a cigarette lighter. Bobby explained that he was going to apply the flame to a corner of the bag of chips and cause a hole to be created. The hole would make it easy to fold the bag over because with the air out of the bag, there would be less crunching bag sounds. Both Bobby and Donny observed other persons in the store including two sales clerks. Donny suggested that they split up in the store, to divide the attention of the two sales clerks.

Bobby applied the flame to the corner of a bag of chips but because he noticed that the clerks were looking at him, he quickly walked over to the freezer section where Donny was standing. After a minute, he returned to the rack of chips with Donny. Instead of a hole in the bag, Bobby and Donny saw that the bag was half in flames. Donny quickly grabbed the bag and tossed it into a garbage can outside, next to the front door of Mann’s Convenience Store. They left immediately without mentioning the fire to any of the store staff and assumed that the fire was extinguished by throwing it into the

garbage can. Unfortunately, a fire resulted and caused damage to Mann's Convenience Store and its contents. The total damage was estimated at \$200,000.

Both Bobby and Donny were arrested a week later as a result of being identified on a video-recording from a security store camera. Bobby declined to provide a statement to the police. Donny provided a voluntary statement to the police investigators. He stated that he remembered drinking beer and smoking cannabis marijuana cigarettes with Bobby and other friends on the evening in question (when the offence was alleged to have occurred). He also recalled that Bobby had wanted to attend Mann's Convenience Store however, he claimed that he had no actual memory of attending the store. He described that during the evening in question, his mind was "fogged over" and he was overcome with a feeling of utter helplessness, in that he had no control over his body. He was so concerned that he visited his family doctor the very next day after the party. His doctor attributed these feelings/experiences being likely due to the combination of alcohol and drug use by Donny on the previous evening. Donny did not provide any further information to the police.

Bobby and Donny were both charged with arson under s.433 of the **Criminal Code** with respect to Mann's Convenience Store.

Section 433 of the **Criminal Code** reads as follows:

433. Every person who intentionally or recklessly causes damage by fire or explosion to property, whether or not that person owns the property, is guilty of an indictable offence and liable to imprisonment for life where

(a) the person knows that or is reckless with respect to whether the property is inhabited or occupied; or

(b) the fire or explosion causes bodily harm to another person.

The related sentencing provision is found under Section 434 of the **Criminal Code** which reads as follows:

434. Every person who intentionally or recklessly causes damage by fire or explosion to property that is not wholly owned by that person is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

ANSWER ALL FOUR (4) QUESTIONS BELOW. ASSUME THAT THERE ARE NO CHARTER VIOLATIONS FOR EITHER BOBBY OR DONNY IN THE SCENARIO AS DESCRIBED.

SUGGESTED TIME: 90 MINUTES

Question 1: (20 MARKS)

Can the Crown establish a *prima facie* case against Bobby and Donny for the offence of arson? In your answer, consider the participation of Bobby and Donny as “parties to the offence” of arson.

NOTE: For the Crown to establish a “*Prima Facie* case” means that the Crown must establish each of the elements necessary to prove the offence. The presentation of a *prima facie* case does not include analysis of the credibility of evidence or any possible defenses to that evidence.

Question 2: (20 MARKS)

Is the defence of intoxication available to Bobby? Is the defence of intoxication available to Donny? Explain.

Question 3: (15 MARKS)

Assume that at trial, the Crown is not successful in proving that Bobby and Donny committed the offence of arson. In your opinion, is there a basis for the Crown to argue that Bobby and Donny should be convicted of the lesser included offence of mischief as found in Section 433 of the **Criminal Code**? Why or why not? (Please be succinct in your answer).

Section 433 reads as follows:

430 (5.1) Every one who willfully does an act or willfully omits to do an act that it is his duty to do, if that act or omission is likely to constitute mischief causing actual danger to life, or to constitute mischief in relation to property or data,

- (a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years;**

....

Question 4: (15 MARKS)

Bobby has decided to plead guilty to the charge of arson as alleged. Bobby is currently 23 years old. Bobby was 21 years old at the time of the offence. He has no youth criminal convictions. However, Bobby does have an adult record, for a conviction relating to a prior charge of simple possession (8 grams) of cocaine (received a year earlier and to which, he was sentenced to a fine of \$500). After the offence, he enrolled as a full-time student in a business diploma program at the local college. He will be graduating next year. At the time of the offence, he was living with his parents. He continues to live with his family. He currently does not have a job but has been volunteering at the local Food Bank for the past 6 months. The Crown has advised that it will be seeking a jail sentence of 6-9 months. (Note: The Crown is not seeking an order of restitution for payment of damages caused as the damages have been covered through the store company's insurance.) What type of sentencing alternatives are available? As defence counsel, what sentence would you specifically recommend to your client Bobby and why? Make reference to any specific sentencing principles and be specific as to the type of sentence that you would recommend to Bobby.

PART 2 – TOTAL: 30 MARKS (OR 15 MARKS EACH QUESTION)

ANSWER ONLY TWO (2) OF THE FOUR (4) QUESTIONS

SUGGESTED TIME: 45 MINUTES EACH

Question 1:

What are the three main sources of Canadian Law?

Choose ONE of these sources of Canadian law and explain how this one source influences the other TWO.

Question 2:

Section 8 of the *Canadian Charter of Rights and Freedoms* guarantees “everyone the right to be secure against unreasonable search or seizure”. Explain the legal concept of “expectation of privacy” in relation to Section 8 and the development of the law, including some current challenges arising in this area (as applying to technology).

Question 3:

What right does s.12 of the *Charter* protect? What is the relationship between s.12 of the *Charter* and the sentencing provision termed “Mandatory Minimum Penalty”? What is the current status of Mandatory Minimum Penalty sentences in Canada?

Question 4:

- a) Describe the significance of SCC’s decisions in *R. v. Gladue* [1999] 1 S.C.R. 688 and *R. v. Ipeelee*, 2012 SCC 13.
- b) In June 2015, the Truth and Reconciliation Commission published a number of calls to action. How many calls to action were listed? Describe the two-fold purpose of the calls to action?
- c) One of our guest speakers commented, “Open your eyes to the experience of Indigenous peoples within the criminal justice system”. How do you accomplish this without reading the Truth and Reconciliation Commission Report?

END OF EXAMINATION

Good luck! Have a safe and happy holiday!