

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

MID-TERM EXAMINATION – DECEMBER 2020

LAW 221.003  
Criminal Law & Procedure

Professor Benjamin Perrin

**EXAM PASSWORD: JR8WNp**  
RESUME CODE: ABB0D6

**TOTAL MARKS: 100**

(8:50 AM PST) **PREPARATION TIME ALLOWED: 10 MINUTES**

(9:00 AM PST) **WRITING (INCLUSIVE OF READING) TIME ALLOWED: 75 MINUTES**

**8:50-9:00 AM Preparation Time (Exam writing not permitted)** – This time is given to students to download/print your exam questions once the exam has been made available online on Canvas, to read the Exam Password on this exam coversheet, to enter the Exam Password for the exam in Exemplify, and to progress in Exemplify until you see the **STOP SIGN**, where you will **WAIT until 9:00 AM. DO NOT proceed past the STOP SIGN. DO NOT begin typing your exam answers in Exemplify until 9:00 AM!**

**9:00 AM Exam Writing Time** – At 9:00 AM, you may proceed past the **STOP SIGN** in Exemplify and begin typing your exam answers. Students are required to calculate and monitor their own time for writing exams. All exam answer uploads will be monitored to ensure that typing of answers only occurred during the allotted Exam Writing Time.

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This is an open book examination, meaning that you can refer to the learning materials listed in the course syllabus only.

**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. Do not email your professor or anyone else about this while the exam is in progress.**

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**ACADEMIC INTEGRITY**

Any exam answers that raise suspicion of breaking any restrictions outlined on this cover page may be subject to being processed through academic integrity software. Students typing exam answers before or after the allocated exam writing time may receive a grade penalty.

## CONFIDENTIALITY REGULATIONS – READ CAREFULLY

As this exam is being written off-campus and is unsupervised, any communication whatsoever (including, but not limited to in person, telephone, e-mail, text, social media, etc.) concerning the contents of this examination with anyone (other than the Student Services staff of the Allard School of Law) is strictly prohibited.

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- **I'm experiencing technical difficulties DURING THE WRITING of the exam**

If you experience technical difficulties with Exemplify at the very beginning or during an exam, you may attempt to solve your problem/reboot your computer **BY YOURSELF**. You are **STRONGLY** encouraged to spend **NO MORE THAN 5 minutes** attempting to do so. You will **NOT BE GIVEN ANY EXTRA TIME** to complete the exam. **If your attempt to solve the problem is unsuccessful**, or if you choose not to make such an attempt, you **MUST** immediately **begin hand-writing** your exam answers with pen on lined paper. **You may NOT type your exam answer in word-processing software.**

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You must also upload to Canvas your hand-written exam answers into the "Exam Answer File Upload (Word Processor or Hand-written ONLY)" folder. Scan or take a picture of each page (.jpg) of your exam and put them into one folder to upload.

Your answer file should be named, and the coversheet of your answers should be titled with:  
Your Exam Code, Course Number, Name of Course, and Instructor Name  
i.e., **9999 LAW 100.001 Law of Exam Taking – Galileo**

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**QUESTION 1 of 1 (100 MARKS; 75 MINUTES)**

Francesco Amarillo (“Amarillo”) is 21 years of age and spends his summers at his parents’ vacation property in Penticton on the shores of Lake Okanagan (a large freshwater lake in central British Columbia). The area is a popular tourist destination with large crowds on the beaches and main street during the summer months. It is also a popular boating area.

Amarillo’s parents own a 16-foot (4.9 metre) powerboat. It has a top speed of 40 kilometres an hour. The boat is 30 years old and has an annual maintenance check by a qualified boating mechanic. During the last annual check in November 2019, the mechanic reported to Amarillo’s parents that the boat’s navigational lights were due for replacement as they were nearing the end of their natural lifespan and it was recommended to replace them. As frugal people, Amarillo’s parents declined the recommendation to replace the navigational lights, saying they almost never take the boat out at night and, if they do, they would just check that the navigational lights were working before going out at night on the water. Amarillo’s parents typically use the boat every 2-3 weeks between May and September. Amarillo had no knowledge whatsoever about either the annual maintenance checks being done or that the boat mechanic’s recommendation to replace the boat’s navigational lights was declined.

Amarillo’s parents have let him operate their powerboat occasionally before – but always with them on board. They have forbidden Amarillo from taking their boat out on his own, as punishment for him repeatedly taking alcohol from their liquor cabinet.

No license is required to operate a pleasure craft like Amarillo’s parents’ boat, but it is necessary for boat operators to complete a Transport Canada-approved boating safety course, which Amarillo completed several years ago and is still valid.

On July 1, 2020, Amarillo’s parents were away for the week, so he invited three friends to come over to celebrate Canada Day. After dark, Amarillo and his friends saw fireworks being sent up from the middle of Lake Okanagan. “Let’s go check it out for a closer look!” said Amarillo, who had not been drinking that evening. Amarillo took his three friends down to his parent’s boat, checked the fuel levels were good and insisted that everyone put on a life jacket, which they did. He then started the engine and drove the boat off towards the fireworks in the darkness. While he could see the front navigational lights on the boat (which were working), he did not notice that the rear navigational lights were not working. As Amarillo’s boat neared where the fireworks were being launched, he could see they were being launched from a boat. Amarillo stopped the boat a safe distance away and turned the boat off, which turned off the front navigational lights such that the boat he was operating was completely dark. It was now midnight.

After ten minutes, the fireworks stopped and Amarillo turned the boat back on. Again, while the front navigational lights came on, unbeknownst to Amarillo, the rear navigational lights did not come on. Less than ten seconds later, Amarillo's boat was struck by a "cigarette boat" (a high speed boat) travelling around 90 kilometres an hour. The collision was catastrophic. While Amarillo somehow survived, his three friends were instantly killed by the collision as well as the driver of the "cigarette boat" who was driving alone.

There is no speed limit for boats on Lake Okanagan. Pleasure craft like the boats in this situation do not use "head lights" to illuminate the water in front of them, but instead each boat is supposed to have navigational lights so that other boats can see them at night. Accordingly, Amarillo was charged under section 12 of the *Safe Boating Act* (see statutory provisions below). He has already pled guilty and paid a \$100 fine in relation to that offence, prior to retaining legal counsel. Additionally, while federal and provincial legislation requires that all passengers on a boat have a life jacket available, it is not required that they be worn while boating.

Amarillo has told his Defence Counsel that he cheated when he took the Transport Canada-approved boating safety course and didn't know there was a need for navigational lights at all.

**The Crown has charged Amarillo with three counts of unlawful act manslaughter (in relation to his three friends who perished) pursuant to ss. 222(5)(a) and 234 of the *Criminal Code*. You are a law student working for Amarillo's Defence Counsel. She has asked you to prepare a legal memorandum describing the essential elements of the offence, your analysis of the strength of the Crown's case, and propose a strategy for defending the accused. Assume that the facts above can be proven beyond a reasonable doubt at trial by the Crown. Your response should cite all relevant legal authorities and principles.**

#### STATUTORY PROVISIONS

##### ***Safe Boating Act, SBC 2001, c. 99***

*(Note: this is a fictitious piece of provincial legislation; for the purposes of this exam assume it is validly within provincial jurisdiction and is a regulatory offence)*

**12** It is a summary conviction offence, punishable by a fine of up to \$100, for a pleasure craft operator to operate their vessel without functioning navigational lights from one hour before sunset to one hour after sunrise on any lake in the province of British Columbia.

***Criminal Code, RSC, 1985, c. C-46***

**222** (5) A person commits culpable homicide when he causes the death of a human being,

(a) by means of an unlawful act;

[...]

**234** Culpable homicide that is not murder or infanticide is manslaughter

**END OF EXAMINATION**