

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

FINAL EXAMINATION – DECEMBER 2020

LAW 400.001
Advanced Criminal Procedure

Professor Nikos Harris

EXAM PASSWORD: 7myZL2
RESUME CODE: ABB2C

TOTAL MARKS: 100

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

(9:00 AM PST) **WRITING (INCLUSIVE OF READING) TIME ALLOWED: 2 HOURS AND 30 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.

This is an open book examination, meaning that you can refer to course materials but not to any outside materials such as materials on the internet or texts.

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.

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.

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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.

In the event any information comes to your attention regarding a breach of these regulations (by others, or inadvertently by you), please immediately contact Student Academic Services (studentservices@allard.ubc.ca) and make full disclosure.

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

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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 (40 Marks)

Alan Accused was charged on March 1, 2018 with assault causing bodily harm as follows:

Alan Accused, on the 15th day of January, 2018, in Vancouver, B.C. did violate section 267(b) of the *Criminal Code* by breaking the arm of Vince Victim.

The Crown proceeded summarily. There were a number of *voir dire*s regarding some difficult evidentiary issues, and the court excluded three pieces of evidence as a result. The defence also brought a large number of other motions which the trial judge summarily dismissed under *Vukelich*. The trial took place on November 1, 2019, and Vince Victim testified as follows:

On January 15, 2018 I was walking my dog in Vancouver, B.C. without a leash on an icy road and I saw my neighbour Alan Accused coming towards me. Accused told me that it was dangerous to have a dog off leash, and he told me that I should immediately put a leash on my dog. We discussed the issue for a few minutes, and then I told Accused that it was none of his business and told Accused that he was an idiot. Alan Accused then pushed me and I fell to the ground. My arm hit the curb and I felt a sudden sharp pain in my arm.

Alan Accused then testified as follows:

I did have words with Vince Victim about his unleashed dog as he described in his testimony. However, I never pushed him. After he called me an idiot, I decided to leave, and I slipped on the road which was very icy and I accidentally fell into Victim. Victim fell softly to the ground and Victim got up and walked away.

The trial judge then gave the following reasons for judgement:

The offence of assault causing bodily harm in section 267(b) of the *Criminal Code* requires the Crown to prove beyond a reasonable doubt that the accused intentionally applied force to the victim, and that the accused's conduct caused more than trivial harm to the victim.

In this case, Accused asked Victim to put a leash on his dog, and Victim immediately insulted Accused. Victim said Accused then pushed him, and Accused said that he accidentally knocked into Victim. I found Victim to be a very credible witness, but found Accused not to be credible based on his demeanor and tone during his testimony. I find that Accused just made up a story about the road being icy, and conclude that he did intend to push Victim. I also find that Victim fell as Victim described which caused serious injury to his arm. I accordingly find the Accused guilty of the offence.

Please outline whether you think there are any possible grounds of appeal in Accused's case, and what remedy Accused might receive if any of those grounds of appeal are successful. Please assume that the trial judge properly described the requirements of section 267(b) of the *Criminal Code* in the first paragraph of her reasons.

Question 2 (40 Marks)

Officer Cop had been a police officer for two years, and in January of 2019 he was called to deal with a loud house party. There were a number of racialized persons at the house party and Cop made a series of comments to those persons which engaged racial stereotypes. A complaint was filed against Cop, and as a result Cop had to attend a two-week racism awareness course. After the course, the instructor wrote a report to the police Chief. In the report, the instructor said that she found that Cop honestly did not think he held racist beliefs, but she found that he had unconscious racist views, including that racialized persons were more likely to commit offences. In the report the instructor also said that during the course Cop made some progress on recognizing and changing his racist views.

Two months later, Cop was on foot patrol when he heard yelling outside a bar. There was a crowd of 10 people standing outside the bar and a person was lying on the ground bleeding. Most of the crowd was white and two persons were racialized. The victim on the ground told Cop that he had just been attacked from behind by someone who hit him with a long object. The victim also said that he did not hear the attacker leave. Cop looked at the crowd of persons and saw that one person in the crowd standing close the victim, who was racialized, was holding a long umbrella that was bent. Cop went up to this person, who was Sam Smith, and arrested him for assault of the victim. Cop then searched a backpack that Smith was carrying and found some illegal drugs.

- 1. Based on all of the above information, do you think Cop violated any of Smith's Charter rights? (30 marks)**
- 2. If Sam Smith was charged with an offence for drug possession, do you think defence counsel for Sam Smith would be able to get access to the report sent to the Chief? (10 marks)**

Question 3 (10 Marks)

Please comment on the accuracy of the following statement:

Where there is a reasonable basis for an accused wanting to call a co-accused as a defence witness, or a reasonable basis for an accused wanting to testify on some counts in an indictment and not others, an accused will receive severance.

Question 4 (10 Marks)

Please comment on the accuracy of the following statement:

Where the Crown has withdrawn from a plea agreement, an accused will have a good chance of establishing an abuse of process requiring a stay of proceedings.

END OF EXAMINATION