

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

FINAL EXAMINATION – DECEMBER 2020

LAW 403.001

The Principles of Sentencing

Professor Isabel Grant

**EXAM PASSWORD: fsB5VJ**

RESUME CODE: ABB2EA

**TOTAL MARKS: 100**

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

(9:00 AM PST) **WRITING (INCLUSIVE OF READING) TIME ALLOWED: 3 HOURS + 15 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!**

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**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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LAW 403, Section 1

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**THIS EXAM HAS 2 QUESTIONS**

Students Must Answer Both Questions

The first question is worth 75 marks (135 minutes). The second question is worth 25 marks (45 minutes). **These times do not include your reading time. You are encouraged to spend 15 minutes reading and planning your answers.**

**Marks****75 1. (135 minutes i.e. 2 hours and 15 minutes)**

Michael Graham has been convicted at trial of criminal harassment (s. 264(3)(a)) and assault causing bodily harm (s. 267(b) on indictment). He pled guilty to impaired operation causing death (s. 320.14(3) and s.320.21(a)). The first two charges relate to his former partner Sophia Myles and the latter relates to the death of 14-year-old Jane McDonald.

**Summary of the Facts**

Michael and Sophia had a tumultuous relationship from the outset. They met in 2014 when Sophia was a waitress at a local bar. Sophia grew up in British Columbia but left home at the age of 17 having quit high school. They began what Sophia described as an “on-again off-again relationship” that was characterized by brief periods of calm between significant conflict and fighting which would lead to a temporary breakup and eventual reconciliation. In 2014, when Sophia discovered she was pregnant, Michael moved into her apartment and they began living together.

The relationship between Michael and Sophia continued to be a troubled one. They were struggling financially and that increased the tension in their relationship. Sophia gave birth to their baby daughter Eliza in the spring of 2015. Eliza was a challenging baby and both parents found it difficult to cope with the exhaustion of early parenthood. Michael began to spend all his time at the local pub and would come home drunk. Sophia testified that this led to a number of violent altercations with Michael. Sophia called the police on three occasions in response to Michael’s violence. On the third such occasion, the police insisted on laying charges against Michael for assault but Sophia ultimately refused to testify because she was worried about raising Eliza alone. The charges were ultimately dropped.

Sophia finally left Michael in 2017 when Eliza was two years of age. By this time, Sophia had gone back to work. Sophia’s mother watched Eliza while Sophia was at work. Michael struggled adjusting to this transition and started harassing Sophia. He repeatedly showed up at Sophia’s work, and was often seen watching her apartment from his car outside. He sent Sophia multiple text messages saying how desperate he was to see her. When she did not respond, he would message her family members. On one occasion, Michael told

## LAW 403, Section 1

Sophia's employer that she was dealing drugs, despite there being no evidence to support such an allegation. He repeated these false allegations on social media. Ultimately, Sophia obtained a family law protection order requiring Michael to stay away from her, but he repeatedly violated that order. Sophia testified at trial of a history of being afraid of Michael and explained that she had not called police about all of these incidents because she was afraid of antagonizing him.

By the spring of 2019, Michael was increasingly desperate to reconcile with Sophia and he knew she would never agree to meet with him so he arranged for his friend Julio Montero to lure Sophia to Julio's apartment where Michael would be waiting. Julio initially refused but when Michael offered to pay him \$500, he capitulated because \$500 was too much money to turn down. Julio knew that Michael was under a restraining order and that he was not supposed to contact Sophia. Julio also knew that Sophia did not want to meet with Michael and that Michael had been harassing her. Nonetheless, on March 13, 2019 Julio called Sophia and told her he really needed her to come to the apartment because he was in trouble and only she could help.

When Sophia arrived, she was very upset to see that Michael was in the apartment and Julio was absent. They immediately got into a heated argument about Michael's behavior. Michael had clearly been drinking as she saw an almost empty bottle of scotch on the table beside him. After many angry words were exchanged, Sophia attempted to leave the apartment. Michael restrained her and threw her on the floor. He quickly grabbed a knife from the kitchen and started attacking her. Sophia testified that she thought she was going to die but she fought back with everything she had trying to calm him down by talking about Eliza. This had the desired impact and Michael suddenly stopped and ran out of the apartment. Sophia called 911 and was taken to hospital. She suffered one deep wound near her shoulder which required many stitches but she made a full recovery.

After leaving the apartment Michael got into his car and drove away at a very high speed. At about 11:30 PM, that same night, March 13, 2019, 15-year-old Jane McDonald was discharged from the emergency ward at Vancouver General Hospital where she had been treated for a broken arm after being injured at her soccer tournament earlier that evening. Jane was put in a taxi by emergency room staff and sent home. Her taxi driver drove east on East 12<sup>th</sup> towards Jane's home. Michael was driving over the speed limit south on Clark Drive. He ran a red light and drove directly into the taxi which was proceeding on a green light. Michael's car hit the taxi where Jane was sitting in the back seat. The driver, who was wearing a seatbelt, suffered only minor injuries as his side airbag deployed. Jane was not wearing a seatbelt, and was thrown from the vehicle and died at the scene. Michael was arrested and taken into custody. He was taken to the hospital where a blood test revealed a blood-alcohol level of 130 mg of alcohol in 100 ml, well over the legal limit. After being cleared medically, Michael was detained in custody. He was initially denied bail on the basis of his criminal record of violence against intimate partners. At a later appearance, upon hearing that Sophia had temporarily left the lower mainland, a judge released Michael on bail after serving 60 days in custody.

**Details from PSR written by probation officer Mandy Jones**

Michael Graham is now 34 years old, born on January 9, 1986. His mother was his primary caregiver during his upbringing, as his biological father was in and out of his life, but mostly absent. When he was eight years old, his mother entered a common-law relationship with a man Michael identified as his stepfather. Michael describes being exposed to family violence, as his stepfather was abusive to Michael's mother. Michael had a difficult relationship with his stepfather. At a young age, Michael put himself in the role as conciliator, trying to recognize the triggers for his stepfather's violence so he (Michael) could intervene to prevent the situation from escalating. When that failed, he did everything he could to spend time away from home.

Michael was an average student in his early high school years but as the situation at home deteriorated he started to skip school and to get in conflicts with staff and other students. His peer group consisted of "the tough kids" who spent a lot of time drinking alcohol purchased by their older friends. Michael reports not having used drugs with the exception of occasional use of marijuana. On graduating from grade 12, Michael immediately left home and supported himself from a number of casual jobs. His employment history began with low-paying, short-term, entry-level jobs, although beginning in his late twenties he began working on contract as a product delivery driver. He has also received some on-the-job training as a mechanic, and performed some auto repair work at his cousin's garage to fill the gaps when he had difficulty finding delivery jobs. Michael's history of employment has been disrupted by short periods of incarceration, but he has been able to reestablish employment after release. Michael is currently unemployed, having lost his job as a driver when he was detained in custody.

Michael has a history of violence against his intimate partners. He has also assaulted the victim Sophia, in the past. He denies these assaults, claiming that he had kept a clean criminal record since his last offence in 2012 (see summary of criminal record below). Michael claims that he suffers from post-traumatic stress disorder (PTSD) as a result of witnessing violence against his mother as a child and that his drinking is directly connected to this trauma, however no formal diagnosis has been made by a psychiatrist. In this writer's opinion, Michael presents a significant danger to the victim Sophia and any sentence imposed should recognize this reality.

Michael's mother is still alive but has not seen her son in several years. She has indicated a willingness to do anything she can to support her son even though he is estranged from most of his family members. She expressed concern that Michael learned at an early age that violence against a spouse is an acceptable way to deal with anger. Michael has a number of friends in the community, none of whom are close friends. Michael has expressed remorse about the death of Jane McDonald but refuses to talk about this crime because the victim's family have initiated civil proceedings against him for the wrongful death of their daughter. However, he still blames Sophia for the events of that night. He reports that if only she had been willing to talk to him none of this would have happened.

## LAW 403, Section 1

He states that she was the mother of his child and she owed at least to sit down with him and have a civil conversation.

**Criminal history**

Michael first came into contact with the criminal justice system in his youth, after threatening his stepfather when he was 14 years old. Those charges were eventually dropped in exchange for Michael seeing a counsellor. His adult record consists of the following convictions:

- assault prosecuted on summary conviction (on an intimate partner) and uttering threats prosecuted on summary conviction in 2008, for which he received a combined sentence of probation for two years;
- breach of probation in 2009 on summary conviction (for violating a no contact condition regarding his partner), for which he received 21 days incarceration and a further probation term of 2 years;
- breach of probation in 2011 on summary conviction (for violating a no contact condition), for which he received 90 days to be served on weekends;
- assault causing bodily harm on indictment (against a girlfriend) in 2012 – nine months imprisonment and two years probation.

**Victim impact statements****Sophia Myles**

I cannot stop myself looking for Michael at every turn. I always expect him to be waiting for me when I come home from work late at night and I'm scared for myself and Eliza. I have worked hard to forgive Michael for these crimes but I cannot forgive him for what he has done to Eliza. She now believes her dad is a bad man who wants to hurt her mother. I've spoken to some of his previous victims and they are still struggling to recover from his violence. I also feel a great deal of grief about the death of Jane. That could have been my daughter and I ache to think about the pain her parents must be feeling.

Jane McDonald's mother, Janice McDonald submitted the following written victim impact statement:

**Janice McDonald:**

Jane was my only child. She was a wonderful girl. She had a passion for soccer and spent most of her spare time playing soccer. Every week she and her friends would get together and watch the Bachelor at our house. I miss those nights more than I can tell you. I can't bear that she was alone at the hospital. I was helping my own mother in Abbotsford because

## LAW 403, Section 1

Jane was supposed to be staying overnight at her teammate's house when I got the call that she'd been taken to the hospital after suffering an injury in her tournament. The hospital reassured me she wouldn't be there long. My husband was out of town that night but I worry that deep down he blames me too. This has put enormous strain on our relationship. I have spent thousands of dollars on therapy and still don't feel any better. Knowing that he has abused his wife and past girlfriends makes this even worse. Please show him that Jane's life mattered.

Victim impact statements from 11 of Jane's teammates were also entered before the court. They described her as a superstar athlete with a great future. She was planning to seek scholarships to play soccer in the US for university and eventually hoping to go on to a professional career. She was described as a devoted and loyal friend and a team leader.

You are clerking for Justice Murray, a recent appointee to the bench and *R v Graham* is the first criminal case she has heard. She heard that you took a course in sentencing and she would like you to sort out all this evidence and to write a draft sentencing judgment. Assume the ranges cited below are correct for the purposes of this exam. She would like your draft judgment to include reference to any problems there might be with the evidence. She has also asked you to write a draft judgment which includes a summary of the sentence the Crown and defence are seeking as well as the position you believe your judge should take. Your judgment should include all aspects of sentencing including ancillary orders. Assume the date of sentencing is December 8, 2020.

### **Ranges Revealed by Your Research**

Assume for the purposes of this exam that the usual range for assault causing bodily harm/assault with a weapon is from 6 months to 4 years of imprisonment. For criminal harassment, it is difficult to identify a range because the seriousness of this offence varies so widely. Courts have suggested anything from a noncustodial sentence on the low-end to four years on the higher end. For impaired operation causing death assume the range in British Columbia is from 18 months at the low-end to 8 years at the higher end.

### **Marks**

#### **25      2. (45 minutes)**

Assume that when police arrived at the scene of the assault on Sophia, they (lawfully) searched the apartment and found a sawed-off rifle which you can assume constitutes a prohibited weapon. They arrested Julio and have laid the following two charges They have charged him with aiding Michael's criminal harassment under s. 264 and also under s. 91(3)(a) with the possession of a prohibited weapon. Julio has contacted you for your advice. Julio knows that the evidence against him is strong and is contemplating whether

## LAW 403, Section 1

to plead guilty. He wants your advice on what consequences he might face if convicted of these crimes. How would you advise Julio? (Assume that the Crown could prove these charges.)

Your interview reveals that Julio is 26 years old and a permanent resident of Canada. His mother came to Canada as a live-in caregiver from South America. Julio moved to Canada after he finished high school. He has no criminal record but has struggled adjusting to his very different life in Canada. He had a difficult time finding work and became involved in the drug subculture trying to find a way to fit in. He would get small amounts of money for running errands for his friends and his mother helped him with his rent. He tells you he did not ask his friends for more details about these errands because he did not want to know. He claims he was holding the rifle for “a friend” but is not willing to identifying that friend to you. Julio expresses great regret about having helped Michael both because he would never have been charged and because he feels he betrayed one of his few real friends Sophia. Julio’s relationship with his mother has been strained by these events and she has said he is on his own until he stops drug use altogether.

**Ranges**

Assume you have done some preliminary research on ranges and could not identify a specific range for parties to criminal harassment but it appears to be at the lower end of the range for criminal harassment generally. With respect to possession of a prohibited weapon, assume for the purposes of this question that the range is anywhere from 12 months to 3 years.

**END OF EXAM**