

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

FINAL EXAMINATION – DECEMBER 2020

LAW 476.001  
Evidence

Bruce Elwood

**EXAM PASSWORD: 2TCWeE**  
**RESUME CODE: ABB4CB**

**TOTAL MARKS: 100**

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

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

**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 you can refer to your notes, the PowerPoint slides, the syllabus distributed at the start of the term and the cases and statutes listed in the syllabus.

You may also refer to the textbooks recommended in the syllabus; however, the examination has been designed based on the class materials so as not to require reference to any textbook or other materials not reviewed in class.

**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.

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

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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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**Fact Pattern**

Driving a mint green 1964 Buick Skylark convertible, Billy Gambini and Stan Rothenstein stop at the Sack-O-Suds convenience store in Golden, British Columbia.

The two friends from Toronto are driving across Canada for the re-start of in-person classes at the Allard School of Law in September 2021.

In the Sack-O-Suds, Billy and Stan grab various items for the road, talking excitedly about their plans for when they get to Vancouver. His hands full, Billy puts a can of tuna in the pocket of his UBC Law hoodie. The two young men pay for their purchases at the counter with credit cards. The store clerk barely looks up from his cell phone. Billy accidentally forgets to pay for the can of tuna.

Outside, the friends load their groceries in the car and drive off.

Shortly after Billy and Stan leave, two men wearing hoodies drive up to the Sac-O-Suds in an old green convertible. They disable the store's security camera system, shoot the clerk, rob the till and drive away, leaving tire tracks over the curb of the parking lot.

John Smiley is at work as the emergency dispatcher at the RCMP detachment in Golden. He receives a 911 call. Between gasps for air, the caller says "Sac-O-Suds ... Vancouver ... UBC ...", and then the connection goes silent.

John immediately dispatches an ambulance to the Sac-O-Suds. Sadly, the clerk is found dead when it arrives.

Meanwhile, on Highway 1 outside Golden, Billy notices the can of tuna in his pocket. As he and Stan debate whether to return to the Sac-O-Suds, they see a police car in the rear view mirror, approaching rapidly, lights and siren on.

While Stan pulls the car over, Billy asks "You took evidence last year, Stan, what do I do about the fact I was caught shoplifting a bunch of times when I was a kid?" Stan replies "Don't worry about it; you don't have any convictions."

After the two cars stop beside the highway, Billy gets out, hand in his pocket, to explain his mistake. To Billy's shock and surprise, the police officer pulls out a service revolver and orders him to lie on the ground. As he gets down, Billy exclaims "I just took a can of tuna".

The police officer delivers a Charter warning, informing Billy and Stan of their right to remain silent and their right to retain counsel. Stunned, the young men remain silent on the ride back to Golden.

At the RCMP detachment, Constable Dean Farley interviews Billy. The interview is recorded on video. Constable Farley tells Billy the police have security camera footage that positively identifies him. Realizing he has been caught, Billy says "It was an accident, I didn't mean to do it." Constable Farley asks "So, you shot the clerk?" Confused, Billy asks "I shot the clerk?"

Pleased with himself for having obtained a confession so easily, Constable Farley turns the video off and leaves the interview room.

Constable Farley speaks to Stan separately. He tells Stan that Billy has confessed. Confused, Stan asks "Why am I here? Billy did it." Constable Farley offers that Stan can go free if he

promises to appear at the trial to testify if required. Stan agrees, and takes the next bus to Vancouver.

Billy is charged with murder.

Having no money and not knowing what to do next, Billy calls his grandmother in Toronto. Billy's grandmother raised him after his parents passed away. She knows Billy is a good kid. It was her idea that Billy volunteer for the Italian Benevolent Society, which awarded him a scholarship in recognition of his good works.

His grandmother tells Billy there is a lawyer in the extended family, Billy's cousin, Vincent (Vinny) LaGuardia Gambini.

Billy reaches Vinny at an auto repair shop in East Vancouver. Vinny agrees to take the case. Anything for family, he says. As it turns out, however, Vinny has only just recently been called to the Bar. His only experience is personal injury law. He has never been to trial.

Vinny drives to Golden, accompanied by his fiancée, Mona Lisa Vito. The couple check into a motel. Vinny visits the Sac-O-Suds and chats with the locals about vintage cars and fishing. Bored, Mona takes photographs and reads Vinny's evidence textbook.

Vinny goes fishing with Crown counsel in an effort to smooth talk him into disclosing something about the prosecution's case. To Vinny's delight, Crown counsel agrees to provide disclosure of all of the Crown's evidence against Billy.

The Crown disclosure includes a witness statement by Sam Tifton. Sam lives across the road from the Sac-O-Suds. Sam told Constable Farley he saw an old green convertible drive into the Sac-O-Suds parking lot, then minutes later heard a gunshot and saw two men wearing hoodies run out of the store, jump into the convertible and drive away over the curb.

The Crown disclosure also includes the results of a photograph line-up conducted by Constable Farley. Constable Farley's report states that Sam identified Billy and Stan from a set of five photographs.

Vinny interviews Sam. Sam tells Vinny he saw an old green convertible pull into the Sac-O-Suds parking lot just before he sat down to eat a late breakfast. Asked by Vinny how he knew it was late, Sam says CBC Radio was playing the National Research Council official time signal as he started cooking breakfast. After he was finished eating and cleaning up, Sam says, he heard a gunshot and rushed to the window and got a good look at two men leaving the store. Vinny shows him photographs of Billy and Stan. Sam states it wasn't them; the guys he saw were older.

At Mona's suggestion, Vinny has Sam sign a witness statement, attaching the photographs.

Crown counsel subsequently delivers an expert report to Vinny. The report is by George Wilbur, a highly qualified crime scene investigator. Mr. Wilbur writes in the report that his chemical analysis of the tire marks left at the crime scene shows they are identical to the tires on Billy's 1964 Buick Skylark.

The case goes to trial before a judge and jury.

**Question 1. (10 marks)**

The Crown's first witness is Constable Dean Farley.

Constable Farley identifies the video statement by Billy, which the Crown tenders as a confession.

What should Vinny do? What are the admissibility issues the trial judge must decide?

**Question 2. (10 marks)**

The Crown's second witness is Sam Tifton.

The Crown asks Sam whether the men he saw leaving the Sack-O-Suds are sitting in the courtroom. Sam points first to Billy at the defence table, and then to Stan in the gallery. He testifies that he thinks they are the two men he saw leaving the Sac-O-Suds, although he is not certain. He testifies that he knows he identified them previously.

The Crown re-calls Constable Farley to the stand, and asks him to describe the photo line-up in which Sam identified Billy and Stan.

What should Vinny do? What are the admissibility issues the trial judge must decide?

**Question 3. (10 marks)**

The Crown's next witness is John Smiley.

The Crown asks John to describe what he heard during the 911 call on the morning in question.

What should Vinny do? What are the admissibility issues the trial judge must decide?

**Question 4. (30 marks)**

The Crown's last witness is the crime scene analyst, Mr. Wilbur.

Mr. Wilbur summarizes his expert opinion that the tire marks at the crime scene were made by the tires on Billy's Buick Skylark. The jury seems impressed.

The only question Vinny can think of to ask Mr. Wilbur in cross-examination is whether the tires on the Buick are a common brand and size of tire. Mr. Wilbur agrees they are.

The Crown rests its case.

At lunch, Vinny frets about the defence. Mona tries to help by reviewing her photographs with him. Vinny becomes frustrated and lashes out at Mona for wasting his time. Mona patiently convinces him to look more closely at the photograph of the tire marks over the curb at the Sac-O-Suds, and explains an idea she has had.

Vinny and Mona return to court. Vinny announces that the defence calls Mona Lisa Vito as an expert witness. Crown counsel objects that the defence has not given notice of an expert report. The judge rules that advance written notice is not necessary for responding expert evidence (you may assume this ruling is correct).

The Crown calls for a *voir dire* to determine the admissibility of Mona's evidence. The judge excuses the jury.

Mona testifies that she is an out of work hair dresser. Asked by Vinny in what way she is qualified to give expert evidence in this case, Mona states that her family owns an auto repair shop, her father is a mechanic, her sister is a mechanic, and Mona herself has worked in the family shop since she was a young girl. Under cross-examination by Crown counsel, Mona explains how to adjust the ignition timing on a V8 engine.

Vinny asks Mona to identify the photograph she took of the tire marks in the parking lot of the Sac-O-Suds, which she does.

Vinny then asks Mona whether the car that made the tire tracks in the photograph was a 1964 Buick Skylark. Mona tells the judge it could not have been a Buick Skylark. She explains that the Buick has an axle that connects the two wheels, and would make a tilted, not flat, tire track when going over the curb. The tire marks in the photograph are both flat, demonstrating, she explains, that the car that made the marks had Posi-traction and an independent wheel suspension system. Mona concludes the car that made the tracks could have been one of only two models: the Chevrolet Corvette - which bears no resemblance to the car involved in the Sac-O-Suds robbery - or a 1964 Pontiac Tempest, which has the same size and appearance as the 1964 Buick Skylark. Mona also confirms that both cars were available with the same metallic mint green paint produced by General Motors.

Vinny asks that Mona be qualified as an expert in general automotive knowledge, and that the jury be permitted to hear her evidence.

Crown counsel argues that Mona's evidence is inadmissible.

What are the admissibility issues the trial judge must decide?

**Question 5. (40 marks)**

Vinny must now decide whether to call any further evidence for the defence.

Review the evidence Vinny might rely on for Billy's defence and the evidentiary issues it raises. Include in your analysis the evidence Vinny might have obtained from the Crown's witnesses as well as any further evidence he might introduce as part of the defence case.

**\*\*\* END OF EXAMINATION \*\*\***