

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

FINAL EXAMINATION – APRIL 2021

LAW 221.002
Criminal Law and Procedure

Nikos Harris

EXAM PASSWORD: 5YdV6r
RESUME CODE: B22329

TOTAL MARKS: 100

(8:50 AM PDT) **PREPARATION TIME ALLOWED:** 10 minutes
(9:00 AM PDT) **WRITING (INCLUSIVE OF READING) TIME ALLOWED:** 3 hours and 10 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 external materials such as non-course texts or any online sources.

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.

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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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Question 1 (60 Marks)

Alan Accused is charged with:

- assault with a weapon, through “use of a weapon”, of Vince Victim contrary to section 267(a) of the *Criminal Code*; and,
- second degree murder of Paul Plumber contrary to section 229(a) of the *Criminal Code*.

Alan Accused was a construction worker who was unable to do that work after being repeatedly hit in the head with a hammer by a co-worker. The attack has left Accused with ongoing headaches and it is difficult for him to concentrate. Accused had been unemployed for a number of months when he met Jake Jar at a party. Jar had lots of cash on him and he offered Accused a job in his illegal drug business picking up cash that people owed to Jar. Accused did not want to be in the drug business, but the job paid a lot and Accused was desperate for the money so he took the job. Jar gave Accused a phone to use, and told Accused that he could follow the location of Accused through this phone. After a couple of weeks, one person refused to give Accused the cash owed to Jar. Accused told Jar about this, and Jar said that if this happened again Accused should tell the person refusing to pay that they would be “getting a visit from “Jar and a few friends””.

A week later, Accused was supposed to pick up some money for Jar from Vince Victim in a remote warehouse. Accused drove to the warehouse and went inside, but it seemed to be empty. Accused was feeling nervous about asking for the money, and to calm his nerves he drank a large amount of whiskey from a flask he had on him. After about thirty minutes, Victim entered the warehouse. Accused stumbled toward Victim, and then forgot why he was even at the warehouse. Accused then remembered, and Accused asked Victim for the money. Victim refused to pay, and Accused immediately phoned Jar. Jar told Accused to hit Victim in the head with something. Jar also told Accused that he was driving in the area and that if Accused did not hit Victim, Jar would come to the warehouse and punch Accused in the head. Accused picked up a wooden board which was on the ground and hit Victim in the head. Victim fell to the ground and began bleeding from his forehead.

Paul Plumber, a plumber who was doing some repairs in the warehouse, saw Accused hit Victim. Plumber, who was holding a pipe he was about to install, ran over to Accused and Victim to see if Victim was okay. It took Plumber 15 seconds to run over to Accused and Victim. When Plumber got near them, Accused grabbed the pipe from Plumber and hit Plumber three times in the head with the pipe. Plumber dropped to the ground and did not appear to be breathing.

A few days later, Accused was in a restaurant with Jar and was shocked to see Plumber sitting at a table near him. Accused went up to Plumber and apologized for hitting him and Accused said he was scared that Plumber was going to hit him with the pipe when they were in the warehouse. Accused also told Plumber that he should go to the hospital to have his head looked at.

(Question 1 continued)

Plumber told Accused that he knew he should go to the hospital because his head was constantly hurting but that he had decided not to go. A week later Plumber died as a result of a brain injury. A medical expert found that the brain injury was caused by recent trauma to the head and found that if Plumber had been medically treated sooner, he would possibly have survived the head trauma.

Do you think Alan Accused will be found guilty of any offences? Please set out your reasons why or why not, and include an analysis of each element of the offences and any relevant defences.

Question 2 (20 Marks)

Carly Cop is a police officer who was on foot patrol on a Friday evening in downtown Vancouver, B.C. Cop heard some yelling outside of a bar and went to see what was happening. Cop saw Violet Victim on the ground bleeding from cuts to her cheek. Victim told Cop that she had just been punched in the face by someone but that she did not get a look at her attacker. Cop saw a group of people in close vicinity to Victim, and one of them, named Paul Prince, started walking away quickly. Cop walked closer to Prince and saw he had a number of large rings on both of his hands. Cop has investigated numerous assaults and is aware that bleeding wounds to the face are much more likely when a person is punched by a person wearing large rings. Cop arrested Prince for assault, and told him that he had the right to contact a lawyer immediately.

Prince did want to call a lawyer, and he used his cell phone to call a lawyer he knew. After Prince had talked to the lawyer for 15 minutes, Prince noticed his phone battery was getting very low. Prince told the lawyer that he had to go now but that he would call him again from a land line at the police station. Prince told Cop that he would be phoning his lawyer again from the police station as his phone battery was getting low. Cop then did a search of Prince, and found a handkerchief with blood on it when going through Prince's pockets.

During the drive to the police station, Cop asked Prince why he had hit Victim. Cop said it was important to know what had happened, and that Prince would feel better if he just told the truth. Cop then mentioned that some people hit people because they are defending themselves, and Prince said that he had no choice but to hit Victim.

Shortly after arriving at the police station, Cop informed Prince that he was also a suspect in a murder that occurred months earlier. Prince immediately asked to speak to his lawyer again, but Cop told Prince that he had already had that conversation and that he could phone his lawyer again after their interview. Cop then started questioning Accused.

Did Cop violate any legal rules or rights of Paul Prince? Please provide an analysis of why or why not.

Question 3 (20 Marks)

You are defence counsel and you are defending a person charged with manslaughter contrary to section 222(5)(a) of the *Criminal Code*, and the unlawful act relied upon by the Crown is assault contrary to section 265(a) of the *Criminal Code*.

You look through the disclosure from Crown counsel and see that there are three eyewitnesses who knew the accused and identify him as the person who pushed the victim. They said the victim then grabbed his chest and fell to the ground. The disclosure also has a medical report which shows that the victim, who was in very poor health, died of a heart attack as a result of the push. The accused tells you that he did push the victim but that it was just a slight push.

The accused says he is thinking about pleading guilty. He also says that he should get a lighter sentence because he is a hard worker who has had the same job for 30 years and his income is the sole source of support for his large family. The accused says he will lose his job if he gets a significant term of imprisonment.

Can and should the accused plead guilty? Also if the accused does plead guilty, would the evidence relating to his job be relevant, and if so, how would the defence present this evidence in a sentencing? You do not need to address the specific sentence the accused might receive.

END OF EXAMINATION