

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

FINAL EXAMINATION – April 2021

LAW 221.003
Criminal Law & Procedure

Professor Benjamin Perrin

EXAM PASSWORD: d9462M
RESUME CODE: B10791

TOTAL MARKS: 100

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

(9:00 AM PDT) **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.

This is an open book examination, meaning that you can refer to the learning materials listed in the course syllabus only. You are not permitted to use the Internet for any purpose other than accessing these required course materials and submitting this examination.

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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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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MARKS**70 Question 1: Fact Pattern**

Atkins, Biggles, and Chu are inmates at McBride Institution, a medium-security federal penitentiary in British Columbia. Each are serving lengthy prison terms for serious violent offences. Each of the inmates are assigned to work in a certain program: Atkins in the shop, Biggles in the kitchen, and Chu in the outdoor garden. A regular inventory is taken in the shop, kitchen, and outdoor garden to ensure that no tools or other items that could be used as weapons or to escape have been taken by inmates.

Atkins is involved in trafficking illicit narcotics inside the prison to fellow inmates. He often talks about famous prison breaks, bragging that he's smart enough to pull one off too.

When Biggles and Chu entered prison, they were each independently diagnosed with "opioid use disorder" based on the American Psychiatric Association's authoritative *Diagnostic and Statistical Manual of Mental Disorders*, Fifth Edition (DSM-5). Their diagnostic assessment reports each found "a problematic pattern of opioid use leading to clinically significant impairment or distress" that consisted of "persistent unsuccessful efforts to cut down or control opioid use" and "recurrent opioid use in situations in which it is physically hazardous."

In prison, Biggles and Chu began to rely on Atkins to supply them with illicit narcotics after their attempts to stop using these drugs failed (both Biggles and Chu had completed the substance use program offered by the prison). Over time, both Biggles and Chu accumulated substantial drug debts to Atkins. One day, Atkins met with Biggles and Chu together and demanded that they each repay all of the money they owed him immediately, or else their respective family members would be "made to pay" by Atkins' criminal associates outside prison. Both Biggles and Chu insisted neither they, nor their families, could afford to pay off the drug debt, so they begged for leniency. Atkins replied: "Then you're both going to help me get out of this hole." ("Hole" is slang for "prison") Neither Biggles nor Chu was under the influence of illicit drugs at the time of this conversation.

Atkins offered to forgive Biggles' drug debt if Biggles would steal a roll of aluminum foil from the kitchen when Atkins later asked for it – which is against prison rules under federal *Corrections Act* regulations. Biggles agreed. Likewise, Atkins said he would forgive Chu's drug debt if Chu would cultivate a friendship with a new rookie guard who supervised the garden program (Officer Xander) and extract any personal information from the officer that Atkins could use against him.

Officer Xander is a relatively new guard at McBride Institution. Despite being trained to never speak with inmates about his personal life, Officer Xander had been overheard by

Question 1 Continued;

Chu talking about his love of rugby to a fellow guard. Chu knew something of rugby and began to cultivate a friendship with Officer Xander at Atkins' behest. Eventually, Chu was able to learn from Xander that he had a girlfriend. Over time, Xander disclosed to Chu her name, appearance, and place of work. Chu then gave this information to Atkins, as they had previously agreed. Atkins' criminal associates then used this information to locate and follow Officer Xander's girlfriend from her workplace to her home. They took a photo of her entering her house and arranged for it to be smuggled into prison to come into Atkins' possession.

One day, as Officer Xander was walking by his cell, Atkins called Xander over. Atkins showed him the photo of his girlfriend entering the home, saying "We know where she lives. We're not going to hurt her. But if you don't tell me what I need to know, her house will be burned to the ground the next time after she leaves for work." Shaking, Officer Xander replied: "What do you want to know?" Atkins demanded to know the date of the next search of the cells. Xander replied: "Five days from today." Atkins then ripped up the photograph and told Xander to forget their entire conversation. The next morning, Atkins asked Biggles for the aluminum foil roll from the kitchen and received it from him, as previously agreed.

In the shop, over the next three days while not being directly supervised, Atkins whittled down a piece of wood into the shape of one of the carving knives in the shop. He then covered the replica wooden knife with the aluminum foil from Biggles so that it would appear – at least from some distance away – to be a real carving knife. Atkins then took the real carving knife with him in his pocket and replaced it with the replica he had made. That night when inventory was taken of the tools, the replica was not discovered – the real knife was with Atkins in his cell.

The next morning when the cells were opened, Atkins emerged from his cell and immediately grabbed a fellow inmate (Singh), brandishing the carving knife and demanding to be released. As the tactical Emergency Response Team (ERT) responded in full body armour and heavily armed, Atkins stabbed Singh in the neck. The ERT backed away. Over the next 16 hours, the tense armed stand-off eventually ended when the prison physician who had been viewing live footage of the scene concluded the inmate stabbed by Atkins had died. The ERT then moved in and secured Atkins. Singh was dead.

Atkins has been charged with a wide range of offences under the *Corrections and Conditional Release Act*, *Controlled Drug and Substances Act*, and the *Criminal Code*, including first degree murder under section 231(5) of the *Criminal Code* in relation to the stabbing death of Singh, hostage taking, extortion, uttering threats, and attempted prison escape. The more challenging task for Crown prosecutors is deciding which charges, if any, should be approved against Biggles, Chu and Officer Xander.

Question 1 Continued;

You are a summer law student working under the Crown prosecutor assigned to consider potential *Criminal Code* charges against Biggles, Chu and Officer Xander. She has asked you to write a memorandum with your legal analysis and recommendation of which of the following three charges, if any, should be laid against Biggles, Chu and/or Officer Xander: attempted prison escape (s. 145(1), *Criminal Code*); manslaughter (s. 234, *Criminal Code*); and hostage taking (s. 279.1, *Criminal Code*). In your analysis, be sure to explain the applicable mode(s) of liability and also evaluate the likelihood of success of any defences that may be raised. Assume the above facts can be proven with admissible evidence.

STATUTORY PROVISIONS

Criminal Code (R.S.C., 1985, c. C-46)

Escape and being at large without excuse

145 (1) Every person who escapes from lawful custody or who is, before the expiration of a term of imprisonment to which they were sentenced, at large in or outside Canada without lawful excuse, is guilty of

- (a) an indictable offence and liable to imprisonment for a term of not more than two years; or
- (b) an offence punishable on summary conviction.

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Manslaughter

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

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Hostage taking

279.1 (1) Everyone takes a person hostage who — with intent to induce any person, other than the hostage, or any group of persons or any state or international or intergovernmental organization to commit or cause to be committed any act or omission as a condition, whether express or implied, of the release of the hostage —

- (a) confines, imprisons, forcibly seizes or detains that person; and
- (b) in any manner utters, conveys or causes any person to receive a threat that the death of, or bodily harm to, the hostage will be caused or that the confinement, imprisonment or detention of the hostage will be continued.

MARKS

15 Question 2: Development of the Law

How has sentencing in Canadian criminal law evolved since 1982? What improvements have been made and what challenges persist? Be sure to cite specific materials / lectures / discussions from our course.

15 Question 3: Criminal Law Policy

You are a summer law student working for the Department of Justice Canada's Criminal Law Policy Section. You have been asked to write a memorandum identifying and discussing three specific issues that should be prioritized for legislative reform to the criminal law. Be sure to cite specific materials / lectures / discussions from our course.

END OF EXAMINATION