

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

FINAL EXAMINATION – APRIL 2021

LAW 221.004  
CRIMINAL LAW AND PROCEDURE

Professor Brian Bird

**EXAM PASSWORD: 3gpD69**  
RESUME CODE: B1093A

**TOTAL MARKS: 100 MARKS**

(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.

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This is an open book examination, meaning that you can refer to course materials but not to any outside materials.

**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.

## CONFIDENTIALITY REGULATIONS – READ CAREFULLY

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](mailto:studentservices@allard.ubc.ca)) and make full disclosure.

A breach of these regulations may constitute student misconduct, and you may be subject to penalty or discipline under UBC's Academic Misconduct policies.

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### What Do I Do If:

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

If you experience technical difficulties with Exemplify at the very beginning or during an exam, you may attempt to solve your problem/reboot your computer **BY YOURSELF**. You are **STRONGLY** encouraged to spend **NO MORE THAN 5 minutes** attempting to do so. You will **NOT BE GIVEN ANY EXTRA TIME** to complete the exam. **If your attempt to solve the problem is unsuccessful**, or if you choose not to make such an attempt, you **MUST** immediately **begin hand-writing** your exam answers with pen on lined paper. **You may NOT type your exam answer in word-processing software.**

When you have finished writing the exam, you must upload the exam answers that you completed in Exemplify (if you are prompted for a Resume Code, it is on the coversheet of the exam questions). Email Bernie Flinn, [flinn@allard.ubc.ca](mailto:flinn@allard.ubc.ca), for help with this. Please provide your phone number in the email. Bernie or another IT Support staff person will then help you to upload any answers that you typed in Exemplify.

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 (60 Marks)**

Alan Accused is charged with:

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

Alan Accused was a construction worker who had to leave 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, a person refused to give Accused Jar's cash. Accused told Jar about this, and Jar said 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. To calm his nerves, Accused drank a large amount of whiskey from a flask he had on him. After about thirty minutes, Victim arrived. Accused stumbled toward Victim, and then forgot why he was even at the warehouse. Accused then remembered, and 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, he 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 he 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 move.

A few days later, Accused was in a crowded restaurant with Jar and he was shocked to see that Plumber was not only alive, but sitting at a table near him. Accused went up to Plumber, apologized for hitting him, and said he had been scared that Plumber was going to hit him with the pipe. 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 treated sooner, he would possibly have survived the head trauma.

**Will Alan Accused 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 he 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 Cop would focus on the assault charge during the interview. Cop then started questioning Accused.

**Did Cop violate any *Charter*, statutory, or common law rules or rights of Paul Prince? Please provide an analysis of why or why not.**

**Question 3 (20 Marks)**

With respect to self-defence, the Ontario Court of Appeal noted at paragraph 63 in *R. v. Khill* that, assuming the trier of fact is alerted to the relevant considerations in s. 34(2) regarding the reasonableness of the accused's defensive or protective act, there "would seem to be little direction or control over how the particular factors are weighed and assessed in any given case."

Reasonableness, the Court went on to note, is "left very much in the eye of the beholder, be it judge or jury. Especially where the reasonableness assessment is reflected in the verdict of a jury, that assessment will be largely beyond the reach of appellate review".

**Do you think self-defence is poorly defined in s. 34 of the *Criminal Code* and can create injustice? What changes, if any, would you make to s. 34?**

**END OF EXAMINATION**