

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

FINAL EXAMINATION – APRIL 2021

LAW 467.002
Criminal Law and Procedure
Nikos Harris

EXAM PASSWORD: SR7jHp
RESUME CODE: B14FDF

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 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.

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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)

Fred Fuller was the CEO of a large hedge fund, and one day at his office he got a call from Carol Call who ran a charity. Call said that she had interviewed a current employee of Fuller, Jake Jar, for a job with her, and she wanted to know about Jar's skills and work ethic. Fuller told Call to wait a minute so he could close his office door, and then he said to her as follows:

I don't think it's a good idea to hire Jar in the charity sector. In the hedge fund world, we don't exactly follow all the rules. For example, one time a year ago Jar and I went on a shopping trip and we both used a client's money to buy clothes for ourselves and we disguised it as a "research expense" for the client. We would do sketchy stuff like that all the time with the money of our clients, but we make them so much money that it really does not matter. I don't think that approach would work well in the charity world.

Around the time of this call, Fuller was being investigated for fraud in relation to a construction firm that was doing a major renovation on Fuller's home. Fuller paid the firm hundreds of thousands of dollars, but there was a dispute about a recent invoice of \$50 000. The firm said it had not been paid, and Fuller emailed the firm and said he had paid it, and he attached a receipt which seemed to show that he had transferred \$50 000 from his account to the firm's account. The construction firm checked their account again and they had not received the money, and they also noticed that the receipt emailed to them by Fuller had the wrong spelling for the name of the firm's bank.

The construction firm phoned Fuller's personal assistant, Alan Assistant, to ask again about the \$50 000 payment. Assistant told the firm that he had double checked everything and that the \$50 000 payment had been transferred to the firm's account by Fuller. The firm complained to the police, and the police phoned Assistant. Assistant said he would rather not speak to the police, and the police told Assistant that talking to them was in his best interests. Assistant then said to the police as follows:

I did help Fuller make payments to the construction firm for the house renovation. Fuller paid them a lot, but then Fuller suddenly said he did not want to make one \$50 000 payment because he deserved a discount after giving them so much money. Fuller then typed up a false bank statement saying he had transferred them this money, and he hoped the construction firm would just accept it. When the firm called me, I had to lie to them about it because Fuller told me to, and I have seen him immediately fire people for anything he does not like. I have a large debt so I cannot afford to lose my job.

Fuller was charged with fraud for the \$50 000 non-payment to the construction firm. The first witness called by the Crown in Fuller's jury trial was Alan Assistant who testified as follows:

I am a personal assistant to Fred Fuller, and one of things I assist him with is paying bills. I assisted Fuller with paying invoices from the construction firm for the renovations to the house. Fuller paid every invoice.

(Question 1 continued)

- 1. The Crown is shocked by Assistant's testimony and wants to get the content of his prior statement to the police into evidence. What steps can the Crown take to try to deal with Assistant's trial testimony and to try and get his prior statement into evidence? Provide reasons why or why not you think the Crown will be successful. (30 Marks)**
- 2. Do you think the Fuller's statement to Carol Call would be admissible evidence in his fraud trial for the \$50 000 non-payment? Please provide reasons why or why not? (30 marks)**

Question 2 (30 Marks)

There was a sudden fire in a warehouse, and Alan Accused has been charged with arson based on the theory that he deliberately started this fire. A police officer, Oliver Officer, was on foot patrol near the warehouse at the time of the fire, and is intending to provide the following testimony at Accused's jury trial for arson:

I ran over to where I saw smoke and I saw the warehouse was on fire. The fire department was able to put out the fire and then I entered the warehouse to inspect the damage. I saw a particular type of burn marks on the wall of the warehouse, and I learned in an eight week police course on causes of fire that these marks typically occur when an accelerant such as gasoline is used to start a fire. I knew at this point that the fire was deliberately started, so I focussed on who could have set the fire. I saw a large crowd had gathered near the warehouse and I recognized Alan Accused in the crowd. Unlike everyone else in the crowd who was concerned, the look on Accused's face showed me he was overjoyed about the fire.

Six months ago I saw Accused and Roger Rich, the owner of the warehouse which burnt down, in a restaurant. Accused was trying to convince Rich to tear down the warehouse so rental apartments could be built on the land, and Rich told Accused he would never agree to tear down the warehouse. This made Accused very angry and I saw Accused grab a knife from the table and try to stab and kill Rich. I arrested Accused for murder in the restaurant but the case was dropped which was very disappointing.

I went up to Accused in the crowd outside the warehouse which had burned down and when Accused saw me he started walking away. I asked him why he was suddenly leaving and Accused did not say anything. I asked Accused if he lit the fire, and I think he said something about how the land could be used for something useful now.

Please describe any reasonable arguments that could be made to exclude any of the above testimony, and please explain why these arguments would or would not likely be successful.

Question 3 (10 Marks)

Comment on the accuracy of the following statement:

Prior consistent statements of a witness are usually inadmissible, but when they can be admitted the trier of fact will be able to hear the entire prior statement.

END OF EXAMINATON